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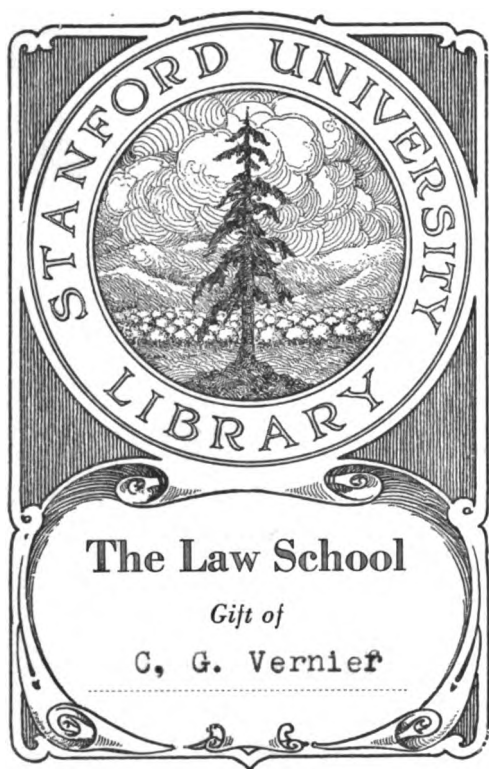
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# **Journal of the American Institute of Criminal Law and Criminology**

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## EDITORIALS

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### REFORMATORY RESULTS IN NEW YORK.

The Board of Managers of Reformatories in the state of New York have just issued their report covering the year ending September 30, 1913. In 127 pages they have incorporated results of their reformatory work with which all the readers of this journal should be on familiar terms. The report will appeal particularly to those who are interested in parole and in prison schools or methods of social education, while from the psychological angle we find here an excellent illustration of the analysis of the external conditions that affect human behavior.

No doubt state reformatories everywhere are meeting with increasing difficulties in accomplishing their work. This is the experience at Elmira and Napanoch Reformatories—the two institutions covered in this report. This fact must be taken into consideration in measuring the results of reformatory life. The growing burden of the reformatories is due to one great fundamental fact: the courts are more and more completely reacting to a conception of their function as educators in the broadest and best sense of the term. The juvenile courts, and others as well, are employing probation more extensively than ever before. The reformatories get those who fail as probationers; the dregs of the system. Other courts are committing an increasing proportion of offenders to reformatories rather than to state prisons; another expression of the educational “spirit of the age.” This gives the reformatory an older and consequently more confirmed criminal who is for this reason less responsive to educational influences than his younger accomplice. The courts are realizing more and more clearly that much crime is due to mental defects on the part of the offender, and when such defects are known there is an increasing tendency to commit to a reformatory on the theory that there is the place where the delinquent will be most likely to secure the educational treatment that is suitable to his peculiar disposition. Those in the two New York institutions mentioned above who are recognized as feeble-minded in one form or another are estimated conservatively at 42 per cent of the reformatory population.

This increasing liberality on the part of our courts—liberality that is no kin to weak sentimentality—is set forth in strong relief now and then when even a judge asserts that the time will soon be here when



## REFORMATORY RESULTS IN NEW YORK

the court and jury will simply convict and leave the prisoner in the hands of a central bureau for thorough examination by experts who will try the *man* instead of the crime, and then, acting as a clearing house, send him on to the institution best suited to his needs. This prophecy is already fulfilled in Ohio as far as juvenile offenders are concerned. In the appointment of a medico-psychologist as an officer of the Municipal Courts of Boston and Chicago, also, we find further illustrations of a similar division of labor.

This trend toward the reorganization of the social function of the courts will progressively increase the responsibility of the reformatory and make it more and more essential to find expert and broad minded educators to handle its changing population. Unless the reformatory can by all means increase its efficiency parallel with the growing burden placed upon it we may expect to find in the future a greater ratio of failures in the operation of the parole law than appear at present. The reply to the argument, sometimes heard, that a given wave of crime can be laid to the parole law should be, first to look for the facts, and secondly to tone up the reformatory and the penal institutions of the state.

But from the statistics supplied in this report from New York it would be rash to infer that any appreciable volume of crime is traceable to paroled prisoners from Elmira. During the year 1909-1910 there were paroled from that institution 1,035 prisoners. Eight per cent of these violated their first parole. Twenty per cent of these failures proved satisfactory on subsequent paroles. But such violations may consist merely in such technical lapses, as leaving the state, frequenting saloons, associating with evil companions, etc. Furthermore, from the date of parole until the issuance of this report only two-tenths of one per cent have ever faced a new criminal charge. The knowledge of this fact is made possible by the filing of all identification material obtained from prisoners within the state with the bureau of identification at Albany through which prompt information is obtained of the arrest of former New York reformatory men wherever it may occur. Certainly this is a record that prompts the confidence of thoughtful men in the reformatory method.

All this stimulates an inquiry concerning the reasons for breaking the conditions of parole. In this same report Dr. Frank L. Christian, assistant superintendent at Elmira, sets forth the results of a study of one hundred consecutive parole violations. Thirty-seven of these cases, he thinks, are directly traceable to mental deficiency; as to what particular form of deficiency he expresses no opinion.

## CLINICAL CRIMINOLOGY

Eighty-six members of this group received instruction in the trades during their reformatory terms. Of this number, but twenty-nine worked at their trades while on parole, and of these only seven were unable to hold their positions on account of lack of experience. Lack of ability and concentration of effort and purpose alone seemed to prevent others from working at their trades also. Elsewhere in this report it is shown that these paroled prisoners suffered no lack of opportunity to work steadily at some honest occupation. But of these one hundred violators of parole only twenty-six held but one job while on parole; for how long, we are not informed. Of the remainder, twenty-seven changed once or several times because they did not like their work; fifteen, because of low wages; eleven, because the work was too hard; six because of laziness; eight, in response to the "hobo" instinct; one, because he was not allowed to smoke during working hours, etc. All this suggests instability of character; lack of that best part of all habits—the habit of work—as the largest factor in determining occupational shiftiness. It is worth noticing that of these one hundred cases, sixty-one, during their parole, enjoyed the aid of a home with parents or other relations which probably to some extent relieved them of the strain of life and placed them in a situation in which reasonably well established habits of industry should have gone a long way toward effecting social adjustment.

No doubt, excepting in the case of pronounced mental deficiency, we have here only proximate causes of parole violation. But even so, they emphasize the direction in which our social needs are located: the early diagnosis and segregation of hopeless persons, and the training of the remainder in habits of industry. The latter is not to be accomplished by one means alone. There is no room in our generation for blind tradition in education. While we keep our eyes open toward the less conventional agencies and adapt them from time to time we must suffer no relaxation at any point along the line.

ROBERT H. GAULT.

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## CLINICAL CRIMINOLOGY.

One of the interesting developments of these years is to be found in prison and reformatory schools. From time to time in this JOURNAL we have taken notice of institutions of this character—their courses of study, methods, etc. In the present issue we publish an article by Mr. A. C. Hill, author of a pamphlet on "Prison Schools," published recently as a bulletin from the National Bureau of Education. Other articles setting forth results of specific research in this special educa-

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tional activity have been arranged for. We drew attention in our last November issue to the organization of a section for the clinical study of criminology in the American Prison Association. In the development of the laboratory idea in the Municipal Courts of Boston and Chicago, and no doubt, in divers other ways within a year past substantial forward steps have been taken in the direction of developing and utilizing that portion of the scientific basis of criminology already laid.

American universities will not be slow in taking up the promotion of knowledge within this field, and the training of those who are to do the practical work will go on apace. Northwestern University offers a three hour semestral course in which the subject is approached from the psychological angle. New York University presents such a course during the summer session, and from the medico-psychological side it has been set forth during the last two summer sessions at Harvard. The University of Pennsylvania Bulletin for February, 1914, announces "Training Courses in Experimental, Educational and Social Psychology for (among others) Social Workers in Clinical Criminology." This work is under the direction of Dr. Lightner Witmer, professor of psychology, and director of the psychological clinic at that university. Professor Witmer, throughout practically all of his professional career, has been contributing to our knowledge of mental subnormality and incidentally of delinquency. His graduate students, now and then, have aimed primarily at the study of delinquency under his direction. It is, therefore, no new step of Professor Witmer's when he makes the following announcement, in the bulletin referred to, of summer school opportunities at the University of Pennsylvania:

### CLINICAL CRIMINOLOGY.

"The equipment of juvenile courts with probation departments which are practically social service departments, and the demand which is being made by reform schools, even by reformatories and penitentiaries, for competently trained research workers, open up new fields for social work, in what may be called clinical criminology. This work requires a scientific analysis of the personality and conduct of adolescents and adults. The initial difficulties of the psychological analysis involved in such investigations render absolutely indispensable a thoroughgoing training in the principles and methods of modern psychology. A training course for social workers directed to moral causes, especially to juvenile delinquents, offers exceptional opportunity for training this type of social

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worker. The career of social workers in criminal psychology will be found as probation officers in connection with juvenile courts, as probationary visitors where the suspended sentence or the indeterminate sentence is a feature of criminal procedure, or as resident researchers in reform schools and reformatories. Many of these institutions are beginning to add to their staff assistants who have been trained along psychological lines."

ROBERT H. GAULT.

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## STERILIZATION AND CRIMINAL HEREDITY.

The question of sterilization has been up for discussion repeatedly in the pages of this JOURNAL within the last year. But so far every writer has limited himself to the operation as mere punishment for deterrence or as a means for preventing criminal heredity. They have been justified perhaps in so limiting themselves; for with such books as Davenport's *Heredity in Relation to Eugenics* and Kellicott's *Social Direction of Human Evolution*, and with such decisions as occurred in the Washington case, and with such blatant legislation as the sterilization act in New Jersey or the bill introduced at the last Illinois legislature, the impression has gone out that direct inheritance of criminality has been *proved* (see the preambles to practically all the sterilization laws so far passed). The critics of such legislation are right in asserting that criminal inheritance remains yet to be proved. They may be wrong, however, in going on to conclude that sterilization is a "cruel and unusual punishment" and of no practical utility. It might conceivably be of considerable value as a preventive measure from the standpoint of reducing irritability, on the analogy of circumcision (proved by Warden Johnson's experiments at Folsom prison). And it is surely within the rights of the state to prevent habitual criminals, insane criminals and defective delinquents from procreating children at all, since they are manifestly unfit for rearing them. It is not germs of criminality we ought to fear, but lack of constructive parental capacity. It would be well, if future discussions kept this aspect of the problem clearly in view.

ARTHUR J. TODD.

## COMMENT ON PROPOSED LEGISLATION IN NEW YORK.<sup>1</sup>

EDWARD SWANN.<sup>2</sup>

The need of the simplification of court procedure in the trial of criminal causes to comply with present day conditions is demanded from so many sources that a series of bills, with that desired end in view, has been introduced into the New York state senate by Senator James D. McClelland, and in the assembly by Assemblyman James J. Walker.

There is not an untried field in any one of these bills, for each bill conforms either to the law in England or the English possessions, the United States statutes, or to the law in one or more of the states of the Union; and one bill, amending the rule of evidence, is to crystallize the law into the form of a statute, although it may be merely declaratory of what the law at present is, but it would prevent one rule of evidence being approved in one judicial district and disapproved, as not the law, in another department. Under the present system of selecting a jury in the trial of an important criminal case, one week to obtain a jury is approximately the minimum time that is usually consumed, and frequently a month is consumed in getting a jury unless the trial jury is known as what is a special jury. In case a common juror is challenged, the questions raised by the challenge have to be tried out by the court and evidence taken, and if, on this collateral matter, the trial court should make a technical error in the allowance or rejection of evidence as to the qualification of a common juror, it would be cause for reversal of the judgment, although there may be no errors whatever in the trial of the defendant himself for the crime for which he was indicted. There are the occasions when knockout questions are endeavored to be administered, and responsible representative citizens seek to avoid jury service on account of the punishment endured by them in the protracted confinement while the jury in an important case is being obtained.

In Massachusetts and New Jersey our practice would not be tolerated. In Massachusetts it is said that in the trial of the Lizzie Borden case, for the alleged murder of her mother, the jury was selected and sworn in less than a day.

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<sup>1</sup>The bills referred to are published in full in the Department of Notes. this issue.

<sup>2</sup>Judge of the Court of General Sessions, New York City.

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To correct this abuse, Assembly Bill No. 16 is to abolish exceptions to rulings upon the examinations, allowance or rejection of common jurors in criminal cases, applying the same rule to the usual petit jury as is now provided for special juries.

The proposed bill for the simplification of the form of the indictment will be best expressed in the words of the proposed statute.

"No indictment shall be insufficient if it contain the title of the action, specifying the court to which the indictment is presented, the names of the parties, and in substance a statement that the defendant at a specified time and place has committed some indictable offense therein specified, which statement may be in popular language, without any technical averments or any allegation of matter not essential to be proved. Such statement may be in words of the enactment describing the offense or declaring the matter charged to be an indictable offense or in any words sufficient to give the defendant notice of the offense with which he is charged.

2. Any indictment or count may refer to any section or subsection of any statute creating the offense charged therein, and in determining the sufficiency of such indictment or count the court shall have regard to such reference."

This is substantially in conformity with the Canadian Criminal Code, and other English speaking countries, and has been found to work very much better than the present provisions of our Code of Criminal Procedure, which perpetuates much of the artificial and technical in regard to the form of the indictment, or at least it has been so construed by the Court of Appeals.

It is not intended in the proposed simplified form of the indictment to give any less information to the defendant than is now required to be given under the present form of indictment, but it is to abolish the necessity of multiplying prolix legal phrases characterizing it in the usual tautological manner, which merely adds words without additional matter. The simplified form is to abolish useless verbiage without diminishing the necessary matter.

The object of an indictment is to give exact and responsible notice to the defendant of the time, place and nature of the offense of which he stands charged, and the court in which he is to be tried. The court has the same power to order a bill of particulars in a criminal case that it has in a civil case, and a defendant who needs any additional facts (but

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not the evidence of facts) may have the indictment supplemented by a bill of particulars.

Another bill intending to amend the law with reference to indictments reads as follows:

“Section 278. Charges which may be joined in one indictment. When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated.”

This is a substantial copy of the Revised Statutes of the United States, Section 1024, which has worked well in the Federal courts since 1853, and is one of the reasons that makes the federal courts more effective in dealing with criminals. In the Williams case in California, 168 U. S. Rep., 390, Williams was a United States inspector and grafted upon Chinamen coming into this country; not only one act of graft was charged in the indictment, but several similar acts from various incoming Chinamen were alleged and proved, and the form of the indictment was upheld by the Supreme Court of the United States. If this form of indictment was adopted in this state it would contribute more than any one other thing to “smashing the police system.” Under the present procedure, although the prosecution may have evidence of the collection of police protection money from many sources, only one specific instance may be alleged in the indictment, and under the unwritten rules of the “system,” a cast-iron alibi will be proven at the trial, whereas, if repeated acts of graft were alleged and proven, even the ready alibi could not be stretched to cover each specific instance.

Syndicated crime cannot be met and coped with adequately under the old methods—our laws and procedure were framed for sporadic cases and the judicial machinery breaks down and refuses to perform its functions in the face of the organization and system of evil doers, who are well advised in advance of how to conduct an operation with the least chance of conviction.

This provision would meet and cope with the difficulty of convicting the arson gangs who committed great numbers of acts of arson, with the same general agreement or combination to insure, burn and collect the insurance, as was testified to by Izzie Stein in the Freedman-Grutz case.

A correlated bill is one that seeks to amend the laws of evidence,

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and is intended to meet just such cases as has just been referred to, and reads as follows:

“In any criminal case where the act with which the defendant is charged is one of a series of acts committed in pursuance of a general scheme, plan or system, any like acts of the defendant which were committed in pursuance of such general scheme, plan or system, may be proved, whether they are contemporaneous with or prior or subsequent thereto.”

This act would enable the court to receive testimony of the various acts of arson committed by Izzie Stein, Grutz, Freedman and Goldman, in pursuance of the general agreement, scheme and plan entered into between them to fire a building and collect insurance money; it would meet and cope with the horse poisoning bands; it would make too precarious the collection of protection money by the police, and the recent conviction of Police Sergeant Duffy for collecting protection money from various regular sources would have been affirmed by the appellate division of this department without a divided court. Judge Scott, who dissented from the majority opinion, did so for the express reason that the present rules of evidence would not permit “evidence of the taking of money from persons other than Roth, who alone was named in the indictment as the person who bribed the defendant.” In some of the other departments the majority opinion in such cases upholds Judge Scott’s view of the present rule of evidence.

Another bill provides that accomplices in the same transaction, who were jointly indicted, may be tried separately or jointly, in the discretion of the court.

The present rule is that in case of misdemeanor where accomplices are jointly indicted they may be tried separately or jointly in the discretion of the court, but in the case of felony, “any defendant requiring it must be tried separately,” leaving no discretion to the court, and not making it necessary for a co-defendant to give any reason why he demands a separate trial. The discretion of the trial court in refusing a separate trial would be reviewable by the appellate division, so that in case any error was made that would be prejudicial to the defendant, he would have his remedy in appeal. As the law now stands seven gangsters, who are arrested and indicted for participation in the same assault, all of them being accomplices to the same act, may each demand a separate trial, without assigning any reason for it. The real reason for such a demand, which is never expressed, is that the city prison is full of prisoners awaiting their turn for trial, and if each of



the seven gangsters demands a separate trial it will take probably one month to try a case, which would not otherwise consume more than three or four days at the extreme, and the result is that the gangster has prepared an excellent foundation for suggesting a minor plea, or give the court the alternative of consuming a month's time unnecessarily, and thereby increasing the number of prisoners awaiting trial in the city prison. The consummation devoutly to be wished is that the criminal laws shall be administered with fairness, certainty and dispatch. An enlightened justice demands a fair, speedy and certain trial under practical and workable rules, but this end may be attained without putting a legal sandbag into the hands of gangsters, which they may use in endeavoring to force the court to accept a minor plea, on the pain of extending the duration of the trial three or four times its length, thereby adding additional cost to the county, wearing out citizens who must be witnesses and often causing them to lose their positions, and keeping other prisoners additional time in the city prison awaiting their turn for trial.

The proposed amendment conforms the law of New York with the federal practice and the English practice.

The rights of the defendant in a criminal case are protected by barriers which are set up between him and the prosecutor, viz:

1. He starts with the presumption of innocence in his favor established by express statute, and the court holds that this presumption is a continuing one and remains with him until the end of the whole case. The defendant does not have to prove his innocence. No duty or obligation with reference to the case ever devolves on him.

2. The burden of proof is upon the prosecution and never shifts to the defendant, and the prosecution must sustain that burden through the case.

3. The prosecution must prove the defendant guilty beyond a reasonable doubt, "and in case of a reasonable doubt the defendant must be acquitted."

4. The defendant may set up affirmative defenses, such as justification, self defense, insanity, etc., and the prosecution must disprove it and bear the burden of the proof.

5. The defendant is entitled to object and except in case any ruling of the court is against him, and the prosecution has no exception.

6. The defendant has the right of appeal from a final judgment of conviction, but the prosecution has not.

7. The defendant goes to trial with exact knowledge of what the

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charge is against him, but he does not have to disclose his defense until after the prosecution has put in its case, so that when the prosecutor presents his evidence in chief he may have to be wholly ignorant of what position the defendant really takes with reference to the charge against him; the defendant may await the introduction of all the evidence against him and may choose his defense thereafter to suit what he may consider to be the best chances of success, such as self-defense, insanity, an alibi, etc.

## EUGENICS AND THE CRIMINAL LAW.<sup>1</sup>

GIULIO Q. BATTAGLINI.<sup>2</sup>

The science of eugenics is the object of increasing interest among sociologists and jurists. Given a name and, in a sense, founded by Sir Francis Galton, this science, as is well known, aims at bettering, both physically and mentally, the qualities of the race in future generations. It cannot be doubted that the fewer the deleterious elements scattered throughout society, the greater must be the productivity of the social organism in all the fields of human endeavor. A saner and stronger race—that saner and stronger mankind heralded by prophet and philosopher—is what eugenics today holds in view. And it is by reason of the characteristic attention of the English-speaking peoples to everything which concerns physical development and social well-being that this science has taken form in their midst.

Eugenics is a matter that possesses great interest for the criminalist, although so far as I know, no criminalist has yet dealt with it. Criminals are deleterious elements in the race—individuals who lack adaptation from a social standpoint—especially when they come within the categories of *born criminals* and *insane criminals* in Ferri's classification, or within the category of *Zustandsverbrecher* (men of criminal character) pursuant to the teachings of von Liszt.<sup>3</sup> If the doctrines of eugenics are to be based solely upon the laws of heredity (Mendel, Galton, et al.), then it is natural to demand that measures be adopted to hinder the reproduction of those offenders who constitute deleterious racial elements, in order that they may not inflict upon society a posterity with criminal tendencies. Measures such as the practice of sterilization already prevailing in a number of the American states would answer this purpose perfectly.

But we are unable to agree that the science of eugenics should rest on this purely biologic basis. Heredity is the subject of much debate, and serious doubts have arisen as to its laws, especially with regard to the transmissibility of intellectual and moral characteristics. Now a science which favors positive methods and *ought* to proceed by the use of these methods cannot build on any such foundation of sand as the laws

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<sup>1</sup>Translated from the Italian by Robert W. Millar of the Chicago Bar. Lecturer in Northwestern University Law School.

<sup>2</sup>Of the Royal University of Rome.

<sup>3</sup>[Or, one might add, can be numbered among the authors of *natural crimes*, according to Garofalo. See his "Criminology" (Criminal Science Series—Boston, Little, Brown & Co., 1914)—*Transl.*]

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of heredity. There is consequently much to be said against the practice of sterilization. For one thing, there is the doubt as to the transmissibility, by inheritance, of moral and hence of criminal characteristics. Then, again, we have no criterion which will enable us, all at once, to diagnose the case as to its corrigibility or incorrigibility, and there is thus great danger of applying the extreme remedy where the criminality is of a transitory sort. And, finally, the practice is not one that should be tolerated in what we conceive to be the liberal state. Measures of so radical a character, it seems to us, will merely tend to upset the just equilibrium and still further to postpone attainment of the eugenic ideal.

According to our view, eugenics is that science which looks to the amelioration of the physical and mental qualities of the race, by the employment of all those means which *experimental investigation* has demonstrated most fit. And we believe that its task is not a revolutionary one, but rather that of transforming and adapting existing institutions to attain its ends. One of the social institutions which ought to be adapted to these ends is that of *punishment*. Punishment as administered today works altogether too much harm to the physical and mental qualities of the offender—of the individual whose reformation and useful re-adaptation to the normal environment society should have ever in view. The penal establishment is a place of physical and psychic suffering, varying with the organic resistance and moral sensibility of the convict. Moreover, the anti-eugenic harm which it works is not alone to the man who directly undergoes it, but also to his relatives and family. Often these persons suffer more severely than the convict himself. And through economic stress, the want of guidance, the need of affection, they take the path of degradation, without power to resist—driven to theft, adultery, and prostitution, on the one hand—encountering disease and despair on the other.

Now, eugenics requires that punishment, as a harm inflicted for a fixed period, be transformed into a harm which shall vary in duration according to the conduct of the offender. And precisely this sort of harm is found in the indeterminate sentence, which, although the subject of severe criticism, has nevertheless yielded good results in the states of the American Union where it has been adopted. The idea is sound; everything depends upon finding the best means of making it work in practice. Today the judge, in pronouncing sentence, condemns the offender to imprisonment for a fixed number of years. Instead, the quantum of the punishment ought to be adjusted to the individual during the course of experimentation, having always in view his re-adaptation to society. Otherwise, we would be doing much the same as the

physician who, for an ordinary fever, prescribes forty days of quinine, when two would have been sufficient, and thus kills his patient. Punishment so far as is necessary, but no further—this should be the watchword of penal science.

Under punishment for an indeterminate period, the condition of the offender changes greatly, from a eugenic point of view. He becomes calmer and has a strong stimulus to self-improvement. He knows that the duration of his imprisonment depends upon his conduct. Society does not say to him: "You are guilty, and therefore you are a ruined man; for you there is no further hope." What it says is: "You are guilty, but nevertheless you will be welcomed back to honest life as soon as you have shown yourself worthy." The prison will thus teach not irrevocable debasement, but redemption through personal effort. The indeterminate sentence aims to return to society a man physically and mentally fit instead of one lacking in adaptation.

Furthermore, the indeterminate sentence does not produce upon the convict's family the anti-eugenic effects which characterize the punishments of the present day. Instead of degradation and despair, the indeterminate sentence, through the psychic law that the uncertain has fewer torments than the certain, carries with it hope and tranquillity. The family from time to time is expecting the liberation of the offender; it takes heart at the encouraging news from the prison administration. There is something to cling to; faith in personal effort is not destroyed; the organism is more resistant to disease; the blight of the crime is healed; upon the wife, the daughter of the convict, is more strongly impressed the value of honest living. Thus the indirect and eugenically maleficent effects of punishment are in many cases completely annulled.

During the last quarter of a century, the struggle against crime has more than ever become the center of attention in all the civilized countries. The stimulation of interest in this question, the propagation of its study throughout the world, the bringing of it home to every thinker on social problems—this is wherein consists the unquestioned merit of the Italian positive school. And the movement of reform in penal legislation, which is the prime activity of this school—a movement which, though debated and open to debate, in part, at least, proceeds on sound premises—has been held solidly in line by that distinguished sociologist and humanitarian, Enrico Ferri.

Now, every attack which is directed by the modern state against crime is a step in accord with the eugenic ideal. Crime acts anti-eugenically in two distinct ways: first, the tendency to offend, *le penchant au crime*, can be hereditarily transmitted, and, secondly, with

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criminal parentage, there necessarily goes a criminal environment in which that tendency increases by appropriating to itself criminal impulses and habits.

But, besides crime, there is a certain clever and ingenious knavery which, wearing the garb of honesty, often causes, and with impunity, much greater injury to its victim than crime proper. Here, too, there is naturally created a criminal environment most dangerous to the offspring. Like crime proper, this "criminal *hinterland*" is to be combated in the name of eugenics, and along two lines in particular: First, certain acts which today are unpunishable, as, for example, certain species of commercial fraud, should be classed as crimes. These should be the subject of stringent legislative measures and their punishment should, as far as possible, be directed toward bringing about a greater amount of good faith in commercial affairs. Secondly, apart from the punishment, application should be made of all those general measures—economic betterment, moral education, and the like—which aim at restraining individual enterprise and ingenuity within the socially useful confines of honesty.

Concerning the relationship between eugenics and crime, it must therefore be noted that the penal code is *par excellence* a group of eugenic measures. For the code exacts only the conservation of certain interests and sentiments, indispensable to the well-being and development of the race. Hence *the penal code is a eugenic instrument*, although until today, it has been without consciousness of this function. And following the results of eugenic science, it can tomorrow widen or narrow the circle of crimes in the end of conducing to the physical and psychic improvement of the race.

## ARCHAIC CONSTITUTIONAL PROVISIONS PROTECTING THE ACCUSED.

E. RAY STEVENS.<sup>1</sup>

To find the origin of one of the most potent causes for dissatisfaction with present day administration of the criminal law we turn to the days when one accused of crime was obliged to meet his accusers without counsel, without witnesses, without the right even to be sworn in his own behalf. Then the pressing need was to establish laws that would protect the accused. The long struggle to secure such protection resulted in a deep seated conviction that the chief purpose to be accomplished by the administration of criminal laws was the protection of the accused.

Most of these ancient abuses never existed on American soil. The colonies did not adopt the barbarous penal codes of England. But they did adopt a mass of technical rules which were invoked by humane judges to protect the accused in the days when despotic kings sought to secure the conviction of those innocent of crime. The traditions of these abuses came with the liberty loving settlers and they wove into the warp and woof of their constitutions the old technical rules that had been found essential to protect the rights of the accused in the mother country.

Under these constitutional guaranties criminal codes are too often interpreted and administered in the light of rules established by judges in the days when punishment for crime was so severe as to shock the sense of justice of many of the judges who administered the criminal law. In those early days "it was natural that technical objections, which perhaps alone stood between the criminal and the enforcement of a most severe if not cruel penalty, should be accorded great weight and that forms and modes of procedure, having really no connection with the merits of a particular case, should be insisted upon as a sort of bulwark of defense against prosecutions which might otherwise be successful and which at the same time ought not to succeed."<sup>1</sup> But there is no longer a reason for maintaining this protecting wall of ancient legal technicalities about the person of the accused. "The man now charged with crime is furnished the most complete opportunity for making his defense. \* \* \* The modern law has taken as great pains to surround the accused person with the means to effectively make his defense as the ancient law took pains to prevent that consummation."<sup>2</sup>

<sup>1</sup>Judge, Circuit Court, Ninth Judicial Circuit, Madison, Wisconsin.

<sup>1</sup>Peckam, J. in *Crain v. United States*, 162 U. S. 625, 646; 40 L. Ed. 1097, 1103.

<sup>2</sup>Winslow, C. J. in *Hack v. State*, 141 Wis. 346, 351, 2.

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Let us turn to these constitutional guaranties that we may see how much of existing dissatisfaction with the criminal law may be traced directly to these old technical rules so firmly intrenched in our law by constitutional provisions.

From the beginning to the end of the trial these constitutional guaranties give the accused the advantage. To illustrate, the prosecution must try the defendant in the county or district where the offense was committed; it has no choice. But the defendant may waive this right and demand that the place of trial be changed when he feels that it will be to his advantage to be tried in some other place.

Again, the defendant may take the testimony of witnesses anywhere on the face of the globe by deposition and use that testimony upon the trial, but the prosecution is confined by the constitution to such witnesses as it can produce in court who can confront the accused at the trial. As applied to the modern criminal trial, this rule means that the accused may gather his evidence from the four corners of the earth, but that so far as the prosecution is concerned no person who has committed a crime can be convicted and punished so long as the witnesses who must be called to establish the commission of that crime remain outside the territorial limits of the state, whether such absence be through accident or design.

Again, because the king punished jurors who found defendants not guilty, while the accused had no redress in case he was convicted, the defendant in the modern criminal trial is given the right to review upon appeal any action taken or proceeding had from the time of his arrest until sentence is pronounced, while the prosecution in most jurisdictions cannot appeal from any ruling or other proceeding, no matter how erroneous the action of the trial court may be. This handicap of the prosecution has been partially removed in a few jurisdictions, but the state is still powerless to appeal from any ruling or judgment in any criminal case after the jury has been sworn to try the defendant, because jeopardy then attaches and the constitutional provision that the accused shall not be twice put in jeopardy for the same offense protects him from being subjected to another trial, no matter how erroneous the first may have been from the standpoint of the prosecution.

Following rules established by humane judges to avoid the necessity of imposing barbarous punishments, the courts have so interpreted this constitutional provision as to jeopardy that a defendant who is granted a new trial on appeal cannot be convicted of a higher degree of the offense charged than that of which he was found guilty on the former trial. As a practical illustration of the working of this rule,—a defendant, charged with the murder of his wife, was found guilty of the third degree of man-



slaughter. When he learned that his friends had appealed the case to the Supreme Court without consulting him, he wrote the chief justice that the appeal was taken without his knowledge and that he desired to have it dismissed, evidently because he feared that he might be convicted of a higher degree of homicide on the second trial, and therefore suffer a more severe penalty. But when he was informed that he could not be found guilty of a greater offense than third degree manslaughter, if a new trial was granted, he withdrew all objections and desired the appeal to proceed.

These old technical rules are no longer enforced in the country from which we inherited them. If a defendant appeals from a conviction in England, the court to which the case goes may increase or decrease the penalty, take additional testimony or grant a new trial, as the justice of the case demands.

The constitution guarantees to the accused the assistance of counsel for his defense. If he is too poor to provide himself with an attorney he is, in most states, supplied at public expense. The lawyer who defends is often more able and more experienced than the one who prosecutes. The prosecuting attorney is frequently a young lawyer with more time to secure the election than experience to qualify him to serve the public after election.

We pride ourselves that great progress has been made since the abolition of the trial by battle. But do we not reproduce most of the essential elements of the wager of battle in the modern criminal trial? The state and the defendant are represented by their hired champions, while the accused sits serenely watching the contest, wrapped in his mantle of presumption of innocence with the truth securely locked in his breast, because of the constitutional guaranty that he shall not be compelled to be a witness against himself. The outcome of the trial often depends more largely upon the intellectual strength and skill of these hired champions than upon the guilt or innocence of the accused, just as the result of the old wager of battle was determined by the physical strength of the contestants rather than the truth of the charge against the defendant.

We must not forget that the criminal law can give overprotection. When society loses faith in the ability of the law to punish the guilty, it resorts to lynch law and to vigilance committees, while officers of the law, deprived of the right to examine the accused in open court, resort to the third degree or sweating process in the secret confines of the prison cell in order to prevent the escape of men whom they believe to be guilty. The torture has long since been abolished, but in the third degree we find the modern torture, more refined, but often no less cruel than that of the past ages. The third degree should be prohibited. But it may be doubted

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if it will be prohibited so long as it is society's most potent defense against criminals. So long as we permit the accused to refuse to submit to a cross-examination in the court room and thereby conceal the truth, so long may we expect society outside the court room to protect itself by resort to the third degree or other extra-legal means of finding the truth.

No injustice has been done the parties to a civil action by abolishing this archaic rule so that their adversaries may examine them upon the trial. No injustice will be done to the defendant in a criminal case by compelling him to submit to an examination, unless it be unjust to compel the defendant to tell the truth when the truth shows him to be guilty. There is no evidence that can give the jury more light than the answers of the accused, if truthfully given.

If a defendant urges the English court of criminal appeals to set aside his conviction because he is innocent, that court may call the defendant and ask him the questions that will enable it to determine his guilt or innocence. Why should Americans hesitate and shudder at the thought of asking a guilty man the questions that will establish his guilt? If he be guilty, no rule of law should permit him to conceal that fact. If he be innocent, the truth cannot harm him.

The defects in the administration of criminal law which we have discussed are all based on provisions of our constitutions guaranteeing the rights of accused persons. These constitutions express the will of the people. They are the supreme law of the land. The law as enacted by the legislature or as enforced by the courts cannot contravene any of these constitutional rights of the accused. The people alone can change these constitutions. Until they do change them, the people who criticise the law must share with the lawyers and the courts the responsibility for the admitted shortcomings in the law as applied to the criminal.

## SEX MORALS AND THE LAW IN ANCIENT EGYPT AND BABYLON.

JAMES BRONSON REYNOLDS.<sup>1</sup>

### EGYPT.

Present knowledge of the criminal law of ancient Egypt relating to sex morals is fragmentary and incomplete in spite of the fact that considerable light has been thrown upon the subject by recent excavations and scholarship. We have not yet, however, sufficient data to determine the character or moral value of Egyptian law, or of its influence on the Medeterranean world.

Egyptian law was, however, elaborately and carefully expanded during the flourishing period of the nation's history.<sup>2</sup> Twenty thousand volumes are said to have been written on the Divine law of Hermes, the traditional law-giver of Egypt, whose position is similar to that of Manu in relation to the laws of India. And while it is impossible to trace the direct influence of Egyptian law on the laws of later nations, its indirect influence upon the founders of Grecian law is established beyond question. Both Lycurgus and Solon visited Egypt and are said to have made special study of its laws and particularly of its Criminal code.<sup>3</sup>

Our present sources of information regarding the criminal laws of Egypt are limited chiefly to descriptive narratives of ancient writers of alien nations, which are incomplete, superficial and often contradictory. The Egyptian monuments up to the present time have contributed but scant information on the subject. Strabo, Herodotus and Athenaeus (who quotes Ctesias) are our chief informants regarding Egyptian penal law in relation to sex morals. All we are warranted to believe as to Egyptian laws relating to public morality from these meagre and somewhat questionable authorities may be briefly summarized.

According to the "unwritten law" of the best public sentiment, as stated in the Maxims of Ani on a Boulaq papyrus, immorality was strongly condemned. The wise man thus warns the youth: "Guard thee from the woman from abroad who is not known in her city; look not on her, know her not in the flesh; for she is a flood great and deep, whose whirling no man knows. The woman whose husband is far away, 'I am beautiful,' says she to thee every day. When she has no witnesses

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<sup>1</sup>Of the New York Bar. General Counsel, American Social Hygiene Association, Inc.

<sup>2</sup>Historical Jurisprudence. Guy Carlton Lee.

<sup>3</sup>Thonissen, J. J. *Mémoire sur l'organisation judiciaire, les lois pénales et la procédure criminelle de l'Egypte ancienne.* Mémoires de l'Académie royale de Belgique. Vol. 35. p. 6.

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she stands and ensnares thee. O great crime worthy of death when one hearkens, even when it is not known abroad, (for) a man takes up every sin (after) this one."<sup>4</sup> Yet it is said that along with these wholesome and righteous ideals, widespread and gross immorality flourish.<sup>5</sup> The warning just quoted seems to suggest that the scarlet woman was well known in the land. Prostitution was probably common and among the ranks of the courtesans were many married women whose husbands had left them, and who wandered about the country practising their profession.<sup>6</sup> An overlord might and probably did at times abuse his power by making the daughters of his inferiors subjects of his passion, yet such action is openly condemned by a nobleman in proclaiming his own righteous record. "There was no citizen's daughter whom I misused."<sup>7</sup>

The king also might freely exercise his power to gratify his passion as was possible in Europe in the Middle Ages. A king is described as "the man who takes women from their husbands whither he wills and when his heart desires."<sup>8</sup>

*Adultery.*—Adultery with a married woman was a moral wrong and a crime. The standards of the time in relation to sex morality are set forth in a document entitled the Negative Confession (part of Chapter 125 of the Book of the Dead.) In Clause 19 we read: "I have not defiled the wife of a husband," that is, the wife of another man. That adultery was a legal offence against the law is evidenced by a text of the reign of Ramses V (about 1150 B. C.) containing a list of the crimes charged against a shipmaster at Elephantine. The list includes a charge of adultery with two women, each of whom is described as "mother of M. and wife of N." The didactic papyri also warn against adultery as well as against fornication. Ptahhotep says: "If thou desirest to prolong friendship in a house which thou enterest as master, as colleague or as friend, or wheresoever thou enterest, avoid approaching the women; no place prospereth where that is done. \* \* \* A thousand men have been destroyed to enjoy a short moment like a dream; one attaineth death in knowing it." This text is not later than the Middle Kingdom.

The story of Ubaaner turns on the adultery of his wife with a peasant, who is given to a crocodile to be devoured. The woman is burned.

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<sup>4</sup>Development of Religion and Thought in Ancient Egypt. p. 357. James Henry Breasted.

<sup>5</sup>History of the Ancient Egyptians. p. 84 James Henry Breasted. Ctesias, Athenaeus, XIII, 10.

<sup>6</sup>Osiris and the Egyptian Resurrection. E. A. Wallis Budge.

<sup>7</sup>Ancient Records of Egypt. Vol. I, p. 523. James Henry Breasted.

<sup>8</sup>Pyramidentexte, Sethe, Kurt. Sec. 510, quoted in Development of Religion and Thought in Ancient Egypt. Breasted, p. 177.

Herodotus<sup>9</sup> tells of a King, Pheron, who gathered his unfaithful wives into one town and destroyed them by fire.

That the husband had no obligation to the wife if he divorced her on the ground of adultery may be inferred from two marriage contracts of the 26th Dynasty. In the latter Ptolemaic marriage contracts, written in Greek, adultery and all forms of marital infidelity are forbidden to both husband and wife. The penalty for the husband is the forfeiture of the dowry, that of the wife is not specified. The contracts of marriage during the Roman period also prescribe a blameless life, but less in detail.<sup>10</sup>

The laws of Egypt in relation to public morals and particularly to adultery were harsh and cruel.<sup>11</sup> They were, however, no more severe, so far as we know, than those of Europe in the Middle Ages.

A married woman convicted of adultery was punished by slitting the nose, for the reason that that feature was the most conspicuous and the loss thereof would be most severely felt and be the greatest detriment to personal charms.<sup>12</sup>

The male accomplice of a woman guilty of adultery was punished by a thousand blows of the lash.

*Rape.*—Rape was punished by death. In the case of foreigners this punishment was sometimes commuted to exile. The violation of a free woman was punished by mutilation of the male offender, on the alleged ground that the crime involved three great wrongs: Insult, defilement and bastardy.<sup>13</sup>

*Prostitution.*—Prostitution apparently was tolerated. A foreign writer cites the instance of one king said to have prostituted his daughter in order to discover a robber, and of another king, Cheops, who prostituted his daughter to obtain money for the construction of the pyramid bearing his name. Such tales, however, are justly subject to suspicion and savor more of court scandals than of serious history.

Temple prostitution is believed to have been practiced and certain religious festivals were accompanied by immoral dances. But the religious and secular authorities sought to prevent its practice as appears in a law mentioned by Herodotus forbidding sexual intercourse within the walls of a temple.<sup>14</sup>

From the above review of the survivals of Egyptian criminal law

<sup>9</sup>Herodotus II. 60, 64.

<sup>10</sup>Encyclopaedia of Religion and Ethics. Art. Adultery. F. L. Griffith.

<sup>11</sup>Ancient Egyptians. Sir John Gardner Wilkinson. Vol. I, p. 303.

<sup>12</sup>Idem. Vol. I, p. 304.

<sup>13</sup>Thonissen, J. J. Etudes sur l'histoire de droit criminel des peuples anciens. Vol. I, p. 153. (See also Diodorus Book I, Chap. VI, Laws 12 and 13.)

<sup>14</sup>Herodotus II: 111.

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it appears that prostitution existed but was penalized probably, only when practiced in sacred places; that adultery was punished by criminal and civil penalties and that rape was punished by death.

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### BABYLON.

The Code of Hammurabi, the founder of the Babylonian Empire, is the most ancient code of laws dealing with sexual vice of which we have definite knowledge and is supposed to have been proclaimed about 2000 B. C.

Even this Code was not the first law of the land. It is a compilation of existing laws and of still older Sumerian laws. How far back the foundations of the laws of Babylon reach, no one knows. Long before the Code of Hammurabi, possibly as early as 3500 B. C., a single Sumerian tablet contained a brief reference to sex morality:

"If a wife hate her husband and say to him 'Thou art not my husband,' they may throw her into the river."

"If a husband say to his wife 'Thou art not my wife' he shall pay her one-half a mana of silver."

But even this law is too terse and too well formulated to be the beginning of Babylonian law. In fact, as far back as we can trace the history or decipher its monuments, there is no time when we can say "as yet there was no law."

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The Code is recognized as the work of a ruler of great wisdom and foresight who sought equal justice for the strong and the weak. His laws reveal a devout paternal ruler, actuated by the principles that underlie all just legislation.

The central purpose of the Code is explained on a tablet accompanying Hammurabi's likeness: "That the great should not oppress the weak, to counsel the widow and orphan—to judge the judgment of the land, to decide the decisions of the land (and) to succor the injured."<sup>1</sup>

The Code of Hammurabi endured for more than 1500 years as the fundamental law of the Babylonian and Assyrian Empires.<sup>2</sup> It embraced both civil and criminal law, no distinction being made between the two. Discovered but recently, its historical relations to universal criminal jurisprudence are little known.<sup>3</sup> Its influence on Roman and Greek law has yet to be determined. There is already, however, little doubt that the Code contributed to the Mosaic Law, though their parallels and analogies may be due to the common Semitic origin of the two systems.<sup>4</sup> The resemblance between the Mosaic law and the Babylonian code is particularly manifest in their statutes relating to the rape of a betrothed maiden, though the contrast in details is perhaps as notable as the resemblances.

The difference between the two systems is also striking. Hammurabi, in dealing with seduction or rape, does not handle the case of the unbetrothed virgin, as does the Hebrew law, while his treatment of the betrothed virgin differs from that of the Hebrew law. Hammurabi inflicts the penalty of burning (incest with mother, Section 157), of drowning (adultery with neighbor's wife, Section 129, and of daughter-in-law for incest, Section 155), of banishment (incest with daughter, Section 154) and of disinheritance (incest with step-mother, Section 158.) In the Old Testament the punishments are death (incest with step-mother or daughter-in-law, Lev. 20:11 and 12), burning (bigamy, marriage of woman and her mother, Lev. 20:14), disinheritance (incest with sister, Lev. 20:17) and even childlessness (incest with wife of uncle or brother, Lev. 20:20 and 21.)<sup>5</sup>

The Code must be understood as having been devised for a people not fully emerged from the patriarchal state. Incest, so elaborately

<sup>1</sup>Johns, C. H. W. *Babylonian and Assyrian Laws, Contracts and Letters*. P. 393.

<sup>2</sup>Kent, Charles F. *Israel's Laws and Legal Precedents*. p. 5.

<sup>3</sup>Discovered in Susa the ancient Persepolis, by De Morgan, in December, 1901, and January, 1902.

<sup>4</sup>Cook, S. A. *The Laws of Moses and the Code of Hammurabi*.

<sup>5</sup>*Idem*. p. 270 and 271.

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handled and so severely punished, frequently occurred under that social order. The careful determination of the varying duties of the wife, during the absence of the husband as a soldier revealed a people in whose life war was a chief concern. Nevertheless, there is evidence of a relatively settled national existence. Courts were well established and rules of legal procedure determined, though extreme reliance on the testimony of eye-witnesses indicates the immaturity of legal development.

In the interpretation of the Code, two points of procedure must be borne in mind. First, most mandates were permissive rather than peremptory. "Shall," for instance, denotes often not the imperative mode but the future tense. In some cases it is clearly permissive, as when the Code says a widow "shall" marry again. Second, the judge appears to have liberal powers as to the infliction of penalties. Hence, the apparent harshness of certain penalties may have been softened in practice through the exercise of judicial discretion. The judge, for instance, might grant a defendant six months' grace to find witnesses to save his life from a death sentence. When these points are considered, the Code apparently is not more drastic than those of the Middle Ages, or even of a later period, when a man was hanged for sheepstealing.

We may now consider sections of the Code relating directly and indirectly to our subject.<sup>6</sup>

*Lawful Marriage.*<sup>7</sup>—We find in the Code that marriage retained the form of purchase, but was essentially a contract, the woman legally not becoming the wife until the contract had been executed.<sup>8</sup>

*Abandonment.*<sup>9</sup>—Abandonment by the husband was condemned. It was regarded as violation of the marriage contract, releasing the wife from her obligation of fidelity. The wife of a man guilty of abandonment was not compelled to return to her husband should he come back to his own city.

*Desertion.*<sup>10</sup>—The right of the absent soldier to the fidelity of his

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<sup>6</sup>The Code may be found in full in *Babylonian and Assyrian Laws, Contracts and Letters*. Johns, C. H. W.

<sup>7</sup>Sec. 128. If a man has taken a wife and has not executed a marriage contract, that woman is not a wife.

<sup>8</sup>*Encyclopaedia Britannica*. Art. *Babylonian Law*.

<sup>9</sup>Sec. 136. If a man has left his city and fled, and, after he has gone, his wife has entered into the house of another; if the man return and seize his wife, the wife of the fugitive shall not return to her husband, because he hated his city and fled.



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wife was scrupulously protected, if he had made suitable provision for his family. In the event of such provision, if the wife were unfaithful, her punishment was drowning, and this punishment was inflicted even though the husband had been taken captive. Probably some litigation was recognized as to the length of time during which a woman was required to assume that her husband was still living. The Code, however, indicates no period of time which created a presumption that the husband was dead.

If the husband had failed to provide for his wife, she was then free to seek another husband. In other words, it appears that the contract of marriage imposed upon the husband the obligation to provide for his wife in order to retain his right to her fidelity.

If the man taken captive subsequently returned, though he had made no provision for his family, his wife was obliged to go back to him. The children of the second husband, however, remained with the latter.

*Divorce.*<sup>11</sup>—The wife could divorce the husband only for open adultery. The legal grounds stated in the Code under which the husband could divorce his wife were barrenness, neglect of domestic duties

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<sup>10</sup>Sec. 133. If a man has been taken captive, and there was maintenance in his house, but his wife has left her house and entered into another man's house; because that woman has not preserved her body, and has entered into the house of another, that woman shall be prosecuted and shall be drowned.

Sec. 134. If a man has been taken captive, but there was not maintenance in his house, and his wife has entered into the house of another, that woman has no blame.

Sec. 135. If a man has been taken captive, but there was no maintenance in his house for his wife, and she has entered into the house of another, and has borne him children, if in the future her (first) husband shall return and regain his city, that woman shall return to her first husband, but the children shall follow their own father.

<sup>11</sup>Sec. 137. If a man has determined to divorce a concubine who has borne him children, or a votary who has granted him children, he shall return to that woman her marriage portion and shall give her the usufruct of field, garden and goods, to bring up her children. After her children have grown up, out of whatever is given to her children, they shall give her one son's share, and the husband of her choice shall marry her.

Sec. 138. If a man has divorced his wife, who has not borne him children, he shall pay over to her as much money as was given for her bride-price, and the marriage portion which she brought from her father's house, and so shall divorce her.

Sec. 141. If a man's wife, living in her husband's house, has persisted in going out, has acted the fool, has wasted her house, has belittled her husband, he shall prosecute her. If her husband has said: "I divorce her," she shall go her way; he shall give her nothing as her price of divorce. If her husband has said, "I will not divorce her," he may take another woman to wife; the wife shall live as a slave in her husband's house.

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and the broad ground of acting the fool. On this last pretext almost any incident displeasing to the husband could be adduced as cause, but a concubine or a votary might be divorced without cause, provided her marriage portion were returned and provision were made for herself and her children.

A concubine was a woman who cohabited with a man without the legal or social standing of a wife.

A votary was a semi-priestess or vestal virgin whose life had been consecrated to religion. She might marry, but must remain a virgin. She could, however, give her maid to her husband and he might have children by the latter, the children being regarded as legally the children of the votary.

*Adultery*,<sup>12</sup>—Adultery among the Babylonians was solely the crime of the wife. The wife, if caught in the act, was punished by strangling, together with her paramour. The husband, however, might condone the offence of his wife, but in that event, he could not call for the punishment of her male accomplice. If the wife, though accused by the husband, were not caught in the act, she might return home, but if she had become a subject of scandal, her guilt or innocence might, upon the demand of the husband, be tested by requiring her to plunge into the sacred river. In that event it was assumed that if innocent, she would float; if guilty, she would drown.

The nearest approach to punishment of the husband for adulterous acts seems to have been that in the event of his immoralities becoming open and scandalous, the wife might take her marriage portion and return to her parental home. The respective rights and duties of husband and wife are summarized in the doctrine that if the husband

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<sup>12</sup>Sec. 129. If a man's wife be caught lying with another, they shall be strangled, and cast into the water. If the wife's husband would save his wife, the king can save his servant.

Sec. 131. If a man's wife has been accused by her husband, and has not been caught lying with another, she shall swear her innocence and return to her house.

Sec. 132. If a man's wife has the finger pointed at her on account of another, but has not been caught lying with him, for her husband's sake she shall plunge into the sacred river.

Sec. 142. If a woman has hated her husband and has said, "You shall not possess me," her past shall be inquired into, as to what she lacks. If she has been discreet, and has no vice, and her husband has gone out, and has greatly belittled her, that woman has no blame, she shall take her marriage portion and go off to her father's house.

Sec. 143. If she has not been discreet, has gone out, ruined her house, belittled her husband, she shall be drowned.

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belittled the wife, she might desert him. If the wife belittled the husband she should or might be drowned.

*Incest.*<sup>13</sup>—Incest was punished by banishment, strangling or burning, according to the closeness of relationship between the offenders. In the severity of the punishment we may note the care taken to protect family morals.

*Rape.*<sup>14</sup>—Rape was seduction of the betrothed wife of another, provided she were a virgin and living in the house of her father. The punishment was death, to be inflicted only if the offenders were caught in the act. Direct evidence was required. Circumstantial evidence was not admitted or was not conclusive. Conviction was probably rare and the severity of the penalties of the law in unusual instances was the guarantee of its efficiency.

*Prostitution.*<sup>15</sup>—The nearest approach to reference to prostitution is in sections relating to beer houses kept by women. These seem to have been places of ill-repute and probably were frequently houses of prostitution. A votary not dwelling in a convent who lived in a beer house or entered a beer house to drink was put to death. The severity of this penalty inflicted upon the votary who thus compromised her reputation for scrupulous morality is in striking contrast to the temple prostitution of a later period. But neither prostitution itself nor commercialized vice in any form was penalized in the Code of Hammurabi. The prostitute was literally an abandoned woman, ignored by the law.

To summarize, the Code of Hammurabi pre-eminently protected family morals, ruthlessly penalized any immoral dereliction of the wife of improper intimacy within forbidden degrees of consanguinity, mildly condemned the open infidelity of the husband if the wife objected, and there halted its injunctions. Defective in some points, ruthlessly severe in others, it was nevertheless superior in its treatment of sex morality to the laws of Greece and Rome, and probably affected substantially the later Semitic codes.

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<sup>13</sup>See Code of Hammurabi, Section 154 to Section 158.

<sup>14</sup>Sec. 130. If a man has ravished another's betrothed wife, who is a virgin, while still living in her father's house, and has been caught in the act, that man shall be put to death; the woman shall go free.

<sup>15</sup>Sec. 110. If a votary, who is not living in the convent, open a beer-shop or enter a beer-shop for drink, that woman shall be put to death.

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In the later history of Babylon, as given by the Greek, Roman and Hebrew authorities, there are indications that the earlier laws failed to protect public morals when the simpler conditions of the pastoral and patriarchal state were superseded by the luxuries of conquest and the complexities of urban development. Warfare was succeeded by general debauchery, and the decadent Babylon of the time of Alexander had long ceased to be restrained by the laws of the stern and righteous Hammurabi.

Much less is known as to the laws of Babylon relating to sex offences in later centuries. Babylon was denounced in the Apocalypse as "the mother of the harlots and of the abominations of the earth."<sup>16</sup> Herodotus, Strabo and Baruch made the definite and serious charge that temple prostitution of all Babylonian women was ordained by law and universally practiced. It was also later asserted that at the time of Alexander the Great the gross immorality of the Babylonian people reached its climax, and women of the best families were notoriously guilty of acts of glaring immodesty.<sup>17</sup> Yet, in spite of these declarations, the extreme depravity of the social status of Babylon is less well established than has been supposed. Among the ancient records the tale of Herodotus as to the universal prostitution of Babylonian women is the most circumstantial and elaborate. He is authority for the statement that every Babylonian female was required by law to prostitute herself once in her life in the temple of Mylitta, the Chaldean Venus.<sup>18</sup> Strabo<sup>19</sup> and the Book of Baruch<sup>20</sup> bear similar testimony. But Strabo is believed to have borrowed most of his details as to Babylonian customs

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<sup>16</sup>Revelations 17:5. "—and upon her forehead a name written, Mystery, Babylon the great, the mother of the harlots and of the abominations of the earth." (American Standard Version.)

<sup>17</sup>Quintus Curtius Rufus, *The Life of Alexander the Great*. (Eng. translation). p. 140.

<sup>18</sup>Herodotus I, 199: "The most disgraceful of the Babylonian customs is the following: Every native woman is obliged once in her life to sit in the temple of Venus and have intercourse with some stranger." Herodotus then proceeds to describe the method by which this surrender was made, declaring that the obligation was universal and obeyed by women of all classes.

<sup>19</sup>Strabo, Book XVI, Chap. 1:20. "There is a custom prescribed by an oracle for all Babylonian women to have intercourse with strangers." The main details given by Herodotus are then repeated.

<sup>20</sup>Baruch VI, 43. "The women also with cords about them sit in the ways, burning bran for incense; but if any of them, drawn by some that passeth by, lie with him, she reproacheth her fellow that she was not thought worthy of herself nor her cord broken." It may be noted that Baruch does not ascribe universality to the custom.

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from Herodotus, and the author of the Book of Baruch quite possibly obtained his information from the same source. At most he refers only to certain indeterminate practices, not, as does Herodotus, to a general custom. Denunciatory exaggerations of conditions in Babylon by returned Hebrew captives and their descendants were not unnatural, and it is probable that the writer of Baruch was strongly influenced by them. The captive sees the worst side of life, and his judgments are inevitably biased by his experience and point of view. That considerable immorality existed after the nation had acquired wealth and captives, easily debauched, is probable. Erotic references in the cuneiform literature of Babylonia equally fail to corroborate the sweeping accusations of Herodotus against the entire nation.

Erotic language relating to certain temple rites is mystical and symbolic, and its significance as an actual record of conditions and laws in relation to sex morality may easily have been exaggerated. The charges in Herodotus appear, therefore, to rest in part on exaggeration, in part on a misunderstanding of religious rites and are unsupported by any independent and competent evidence, either local or foreign, and until such evidence is furnished may justly be regarded as unproven.<sup>21</sup> In any event, it must be borne in mind that Herodotus writes of a period hundreds of years later than the age of Hammurabi. Certainly there is no hint of such customs or conditions in the austere laws of Hammurabi, and we may fairly hold that the period of Hammurabi's reign a reputable inhabitant of a modern city would find the moral condition of ancient Babylon less shocking than that of mediaeval Europe.

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## SOME IMPRESSIONS OF ITALIAN PRISONS.

GINO C. SPERANZA.<sup>1</sup>

Visitors to Italian prisons must be impressed by the fact that the insufficiency and imperfection of their plants are largely compensated by the excellence and ability of their administrative and disciplinary personnel. With notable exceptions, Italian prisons are still housed in more or less ancient buildings; not infrequently they were formerly convents, which, however remodelled and modernized, are structurally unsuited to the best forms of penitentiary construction and unadapted for the installation of helpful hygienic contrivances. On the other hand, the men who superintend and manage them are splendidly equipped for their work. It is not merely that politics plays no part in prison appointments; it is that prison management is a profession and offers a life's career with a pension and certain official honors to those who follow it.

Prison directors must be university graduates with a law degree, except in the case of directors of penal institutions for the insane, who must be physicians. All are encouraged to take courses in criminal sociology and penology, and advancement depends on length of service and merit.

The guards are generally members of the police force but specially picked for this work, and are under military discipline. To some of the prisons is attached a school for the training of detectives and for students of criminal science.

An example from each of the various classes of penal institutions will best, I think, give an idea of how prisoners and convicts in Italy are kept and of the kind of men who have charge over them.

The "Stabilimento of San Gimignano," on a precipitous rock on the site of the wonderful medieval town of that name, was the first attempt in the old Duchy of Tuscany at prison reform. It is an old, massively-built convent, the small monastic rooms having been converted into splendid prison cells, one prisoner to each. One can, however, attribute the striking cleanliness of the institution only to the splendid management of its director, as without it the plant itself would be a focus for disease. The toilets are old, the jugs for liquid-refuse in the cells are kept in boxes, the workshops are poor, the bathing facilities are insufficient and the washing of clothes has to be done in a dark cellar. But despite all this the place is remarkably free of disease, the convicts seem healthy and

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satisfied and a great deal of good work is done. The money earned by prisoners is divided, 60 per cent to the State and 40 per cent to the prisoners who, except by special permission, must accumulate his earnings. The food is excellent and plentiful but prisoners are allowed to spend a small amount daily for extras; letters can be received by prisoners at any time, but they can write only once every three months.

Punishment consists in reduction to bread-and-water-diet and to specially rigorous confinement, but it can be applied only with the consent of the prison physician.

The prison is for the expiation of serious crimes during the period of solitary confinement. This is carried to the extent that the convict even, when he attends Mass, is placed in an individual box or cell looking out on the church, and takes his daily exercise in an open air enclosure all by himself. It is the opinion of the director that such solitary confinement tends to mental derangement except in a few cases, where such solitary existence seems to result in a calming effect.

The prison has a fair hospital and school and its 127 inmates are taken care of by 27 guards, although the general rule in Italian prisons is ten guards for every one hundred prisoners.

The Regina Coeli at Rome is a different type of penal institution, being one of the Italian *Carceri Giudiziarie*, for persons awaiting trial, or those convicted but whose sentence is on appeal. In such jails are also placed convicts who are at the last stage of their period of incarceration. Such institutions, in short, are less rigorous in discipline than those of the type of S. Gimignano.

The prison is a collection of buildings originally used as a penal institution under the Papal dominion but now greatly modernized. It was built to accomodate 1,200 prisoners, but on the day of my visit the prison population was considerably larger.

The general impression made by this institution was one of lack of orderliness and of no very active attempt at rigor of any sort. Its cells are, as a rule, fairly large, with sufficient light. Each prisoner cleans his own slop pail, the only toilet convenience supplied to the cells. The pails looked old but no offensive smell could be detected. Shower baths are plentifully provided, but I was informed are seldom used.

There is very little space for open air exercise and the men I saw were so huddled together in the open enclosure allowed them that no exercise was possible.

Prisoners awaiting trial get one substantial meal a day besides the usual Italian breakfast of bread and coffee. They can, however, order food from the prison-kitchen at a fixed tariff. I was present at meal time and food was being eaten anywhere that a prisoner happened to be.



There was no mess hall at all, which added to the impression of disorder. The prison kitchen was dark and only fairly clean. But the food was good and plentiful and the prisoners seemed to be in fair condition.

Except where prisoners are waiting trial or are sentenced to solitary confinement, they are placed in groups of not less than three and not more than five in a cell. Italian prison directors claim that having three in one cell prevents certain forms of vice. On the other hand, the purpose of keeping prisoners awaiting trial in solitary confinement is to prevent their preparing alibis.

Consultation-rooms are provided for prisoners awaiting trial; these have large glass doors through which a guard keeps constant watch because, as one warden said "some lawyers are worse than their clients."

Women prisoners are in a separate division and are under the charge of nuns. Italy is still behind in the matter of a prison system for women.

The hospital division is excellent; surgical cases are sent here from other penitentiaries. A number of well-equipped operating rooms and a large number of individual hospital cells are provided.

The most striking thing in Regina Coeli is its industrial system. Besides the usual labor of carpentry and shoemaking there is a very large printing establishment where every branch of the trade is presented from the making of type to the issuing of complete, bound books. Most Government reports are issued here and even the laws of the Kingdom are here printed by those who break them. If ignorance of the law is no excuse this is certainly the clearest example of it!

The prison at Palermo in Sicily is another *Carcere Giudiziario*, perhaps the largest of its class in Italy. It has accommodations for 2,000 prisoners, though its present and average population is about 1,200. Part of it is a modernized ancient fortress; the smaller half consists of modern prison buildings. The institution is divided into nine separate sections, each with a large court yard and a *Giardino* or cultivated field. Such fields are rented to outsiders and cultivated intensively by prisoners.

One section is for women prisoners under the direction of sisters of charity and a few matrons. There is a school for the elementary instruction of inmates. The prisoners sleep and "live" in large rooms, twenty to a room. I saw no direct light in them, the only sun entering through the grated door which opened on a spacious but cloistered yard.

Another section is for minors, and some attempt at mental and moral instruction is here made. But the section is in an old part of the prison and the boys are crowded together three in a room and seem to be under few restrictions.

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The modern part of the prison consists of several tiers of cells opening on inside galleries with running rails. The cells have direct light but not overmuch of it. Toilet facilities are poor; each cell has an iron bucket kept in an iron box which has two doors, one opening in the cell and one into the gallery from which the bucket can be removed when necessary. Bedding is changed once every two weeks. The hospital is in every respect excellent.

There are only 90 guards for 1,200 prisoners, but a company of army infantry does sentry duty at the prison.

Everything considered, and excepting for the spacious court yards where prisoners are allowed to exercise, the general impression was not very favorable.

Of special interest are those institutions in the Italian penal system which represent the more scientific aspects or efforts of penology—the reformatories and the prisons for the criminal insane. Of this latter I shall briefly describe the one at Aversa (*Manicomio Giudiziale*) which is typical of what I have stated at the beginning of this paper—the excellence and experience of the director contrasted with the poverty of the plant.

Dr. Saporito, its director, is a physician and psychiatrist of distinction, and an efficient administrator. The problem he has had to struggle with has been to convert an ancient convent to something like a penal institution. He has begun reforms by knocking down walls to get more space and air. There are about 200 inmates who are either "*guidicabili*," i. e. awaiting trial and under observation as possibly insane, or convict-lunatics. There are life prisoners and long and short termers. At the expiration of the sentence, if cured, they are discharged; if not cured they are transferred to the insane asylum of their domicile.

Dr. Saporito is strongly in favor of completely changing the existing system by having inmates committed to a given institution according to the *class* or kind of mental disease, *irrespective of the character of crime committed or of the quality and quantity of the sentence*; under the existing system epileptics, the violent insane and the docile are all placed together.

While the institution is provided with a good laboratory, excellently furnished with scientific apparatus, a fair library and very detailed records, it is shockingly unprovided with means for remedying or allaying mental troubles. It is essentially a prison, not a hospital, and the rules applicable to penal institutions are generally in force here. But in the lack of all really remedial agencies, in its absence of open air or agricultural work, in the lack of trees, gardens or even large open spaces, the institution is an evidence of that peculiar combination characteristic

of Italian penology—a wonderful application of scientific principles coupled with a great absence of any human kindness.

The men, except the violent ones, pass the day in various court yards, a few working at making cement blocks, a few engaged in the needs of the institution, some employed in poorly lighted and worse ventilated shoe and carpenter shops. In rainy weather they are herded in very dingy "sitting rooms;" they sleep in quarters holding from five to ten beds although the "better class" have individual cells. No moral, physical or mental instruction is attempted, and no regular amusements provided.

The director endeavors to make life easier by granting "hearings" to any inmate once a week and by putting no limit on letter writing or to seeing relatives. Smoking is allowed, but wine is forbidden; the food is good, and more generous and more varied than in the regular prisons. No punishments are allowed, calmatives are sparingly resorted to and straight-jackets are exceptional. Bathing facilities as remedial agencies are scarce, toilets are poor and cleanliness very relative.

There is one guard for every inmate; the prisoners wear the regulation prison garb but rigorous discipline is not strictly enforced. The general impression made on the visitor was of being in the presence of very degenerate types, beyond hope of remedy.

So far, in Italy, no provision has been made for insane female criminals; such women are committed to civil hospitals for the insane. Neither is any special provision made for insane or mentally-defective minors.

The saving element in this institution is its director. He combines considerable scientific training with practical and kindly good sense. The inmates seem attached to him and he interprets and applies prison rules very liberally. He has improved the grounds as best he could and is buying adjacent properties so as to have more space. But Dr. Saporoito struck me as so imbued with the need of scientific inquiry into, and analysis of criminologic data and of mental disease, that he placed somewhat in the background the effort at remedial treatment. But this may be explained by the intent of the Italian law which, while utilizing such institutions as laboratories for the study of criminologic data, look upon them essentially as penal houses.

Turning to the brighter side of penal institution life, we find in the Reformatory of San Michele in Rome another example of poverty of plant with excellence of management and an eloquent proof of how much an able, persevering and well trained man can do despite poverty of material. The reformatory is now called the "Institute Aristile Gabelli" after a famous lawyer and teacher, the idea being to remove even

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in name the appearance of a prison in all restrictive institutions for minors. Dr. Gaetano Rastelli is its efficient and successful director.

This reformatory receives wayward children between nine and eighteen years of age. Under the Italian law, parents may "denounce" their wayward children to a local magistrate who, after due inquiry, may commit them to such an institution. The parents, however, do not lose their "*patria potesta*" but may apply to such magistrate to have their children returned. It is admitted that abuses exist both in the applications by parents to have children committed (so as to be relieved from supporting them) and in applications to have them sent home when parents think such children have arrived at the age when they can earn wages. The children are committed to reformatories away from the parent's domicile.

Although the institution is housed in an ancient Papal building, yet it seems permeated with kindness, good sense and an effective and practical application of reformatory principles.

From the age of twelve the boys are assigned to a special trade, carried on in conjunction with school instruction. The trade training is begun by placing the younger boys in a sort of playroom where tools of various kinds are supplied, together with simple examples of wood-carving, clay modeling, colors, drawings, metal work, etc. They are allowed to try their hand at anything that takes their fancy, but under the supervision of teachers. Upon such efforts, the director, in conjunction with the examination of other data and with due regard of the wishes of parents, decides upon what trade to assign to each boy. The course itself is most thorough, consisting of one year of general preliminary technical training and four years of graduate work leading to a diploma recognized by the Government as equivalent to the diploma of technical schools of like grade, and carries no stigma. The trades include carpentry, shoe or cabinet making, mechanics and telegraphy.

The product of the trade school is not sold; it is either used in the institution or kept for its museum. The modelling, wood carving, cabinet making and mechanical work (a number of small boys were engaged on the building, piece by piece, of a large boiler and engine, riveting every nail and bolt, turning out screws, connections and valves) was of unusual merit and of great artistic promise.

The boys wear a quasi-military uniform, merit and good conduct being rewarded by silver stripes or the leadership of squads, more tempting food, greater privileges, or more frequent outings, besides the honor of representing the institution on special public occasions. Punishments are rare and limited to censure below the age of 12, and from 12 on to deprivation of certain privileges, and confinement to quarters.

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The boys rise at 6:30 a. m. make their own room, go through calisthenic exercises and then have their breakfast of milk and bread. At 9 the work begins, at 12 lunch is served, consisting of a soup, macaroni, bread, a little native wine and vegetables or fruits. Then recreation till 2 p. m. and then from 2 to 5 work again. The evenings are given to recreation, reading, study, etc., and practicing by the boys' band. A small infirmary is provided, but long or serious cases are sent to the municipal hospitals. Twice a week the boys are taken to visit places of interest in the neighborhood. The house has unfortunately small space for outdoor exercise and the building has still barred windows and some of the bedrooms have the old appearance of cells and are not satisfactorily ventilated. The boys sleep each in a separate room and bathe every other day.

On public occasions the boys of the reformatory, march together and sit with the boys of the ordinary schools. They look rather delicate and undersized, but happy and satisfied. Numerous evidences of the attachment of graduates were visible.

The desire to instil right habits of mind and body is visible everywhere and the general impression is that, in comparison with what these boys would get at home, they are most fortunate in having been committed to the intelligent care of Dr. Rastelli.

Italian students have admittedly been the founders of that new and still rather vague science called criminology, and penal science likewise owes a great debt to Italy. But whether because of the great conservatism of Italian legislators, or because of historical causes which retard the spread among the people of a more scientific conception of the criminal, the underlying idea in the Italian prisons is, that the primary purpose of incarceration is punishment. Earnest men and studious thinkers have labored and in a great measure succeeded in bringing science to the aid of prison management and criminal law. But the country at large is still in the grasp of ancient views regarding the criminal and the prisons reflect such popular conception, despite the best efforts of the most trained and efficient directors. In short the prison system of Italy and its criminal legislation today show clearly that the influence of Cesare Lombroso, in its good and bad points, has been more potently at work than that of his, to me, greater and more humane compatriot, Cesare Beccaria.

## THE INFLUENCE OF ENVIRONMENT ON IDENTIFICATION OF PERSONS AND THINGS.

GUSTAVE A. FEINGOLD.<sup>1</sup>

The symbolic representation of justice indicates that it is the consummate desire of the judicial body to measure and to proportion the claims of contending parties with mathematical precision. To be sure, it is an ideal eminently becoming our civilization to presume the prisoner at the bar innocent until he has been proved guilty. This is the protection that a maternal state properly throws about her erring children; and she does it willingly, preferring that ten guilty persons should escape punishment rather than a single innocent one should suffer unjustly at her hands. Nevertheless, the state must watch out for her own welfare, and to that end she must use the most efficient methods for the apprehension as well as for the conviction and punishment of evil doers.

The problem of identifying supposed culprits was a real stumbling block to the police before the present anthropological methods of identification were discovered. These methods, however, are only serviceable in the recognition of a person of whom there already exists a police record, *i. e.*, anthropological measurements, finger prints, etc. But what about the first time offender, or even the professional criminal who is not apprehended in the act of crime, but who is observed therein by a lay person, and is subsequently arrested on the basis of a description of him—how is he to be recognized? An individual is seen lurking in a building, let us say. Subsequently it is discovered that a robbery or a murder or what not, took place in that building. Some days or weeks later an arrest is made, and the persons who had seen this lurking individual are summoned to the police court for the purpose of identifying the suspect. Assuming that the individual under arrest is the one who had been seen lurking in the building, what is the probability that he will be recognized in the new surroundings?

In January, 1914, a man named K. was arrested in Boston charged with the robbery of a local store. For a while the police believed they had the leader of a gang that had made many daring breaks. In order to form a chain of evidence against him, many people who reported seeing suspicious looking individuals near the scenes of crime were

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called upon to make the identification. And so the newspapers printed such items as these:

"The police think that he (K.) had a hand in the spectacular and fatal break in Salisbury last October. \* \* \* Salisbury authorities will come to Boston today with witnesses, who will try to identify K. as one of the robbers."

Needless to say, they failed to identify him. And again with reference to the same individual, we read:

"Special Officer Carey, of the City Hall Avenue Police Station, made an effort to identify K. as the man responsible for the blowing of the safe in Blank's office, one of the jobs that the prisoner denies being connected with. A barber who worked in the building, and who had seen a suspicious character about the time of the break could not identify K. as the man."<sup>2</sup>

Another case where much depended on identification occurred in January in New York. It was District Attorney C. S. Whitman's desire to have a certain individual, X, recognized by another, Y, who had testified to the former's attempt to extort a political contribution of \$150,000 from him. This identification was wanted by the district attorney to complete the case he had presented against X to the grand jury. And so he had the two individuals come to his office, neither of them knowing what he was wanted for. X arrived first. When Y arrived, he was told that X was present. The district attorney introduced the gentlemen to each other, and then asked Y if he had ever met X before.

"I don't think that is the man," said Y. "I cannot be sure. I wouldn't say positively that he is not, but I can't say that he is."<sup>3</sup>

These few instances will suffice to show how indispensable the natural type of recognition, i. e., psychological recognition, still is to the fulfillment of justice. Without going into the question as to whether the persons who escaped identification in the above cases were the actual culprits or not, we may properly ask ourselves: Were the conditions favorable for successful recognition?

No one knows so well as the psychologist how meagre the literature is which deals with this important mental quality. Considerable work has been done on sensory discrimination, but when it comes to recognition of meaningful, conceptualized objects, the field of research is practically untouched. A splendid path of investigation was opened up in 1895 by B. Bourdon, who was the first to use meaningful stimuli

<sup>2</sup>The Boston Herald, Jan. 26 and 27, 1914.

<sup>3</sup>Boston Herald, Jan. 31, 1914.

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in experiments on recognition;<sup>4</sup> none of the later investigators, however, seem to have followed his suggestion. A good piece of work was recently completed by H. L. Hollingworth,<sup>5</sup> wherein he shows the relation between stimuli of different grades of meaning and recognition; though this is not the primary aim of his paper. And finally, by far the best theoretical treatment of the subject has been rendered by Dimitre Katzaroff,<sup>6</sup> but his work, too, fails to throw any light on the problem before us.

Some three years ago, at the suggestion of Professor Münsterberg, I undertook an investigation on the process of recognition and discrimination with meaningful stimuli of graded similarity, under conditions approximating those of life, namely, with distributed attention.

My material consisted of picture postal cards representing every conceivable object, scene and situation, such as men; women and children in different attitudes and activities, singly or in groups; also all sorts of animals and plants, houses, vehicles and streets—in short, everything that a person may very well observe in life and then be called upon to recognize. These picture postal cards were grouped in pairs on the basis of their similarity. The amount of similarity between any two post cards was determined as follows: Two cards that were totally dissimilar, one representing a red rose, and the other a gray church building were given the arbitrary value of 0% S (S = similarity). Two other cards that were identical were given the value of 100% S, and that of course was their real value. The other cards that were to be measured were hung up on the wall in pairs. I then called into my room, one at a time, fifteen mature and competent persons—instructors and graduate students at Harvard University—and asked them to grade the similarity of the postal cards in terms of percentage, rendering their judgment on the basis of the first impression. They were shown the opposite ends of the scale, of course, *i. e.*, the 0% and 100% S cards, and were told to locate the others between them. Thus each pair of cards were rated by 15 persons. By taking the average of the 15 judgments, I secured what we may call the objective similarity of each pair of postal cards. The reliability of the judgments was determined by the mean variation, and I found that the largest M. V. existing for cards that fell within the middle of the similarity scale, 45% S, was about 15% of the total range of judgment. The possible

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<sup>4</sup>Reconnaissance, Discrimination et Association, *Rev. Philos.* Vol. 40.

<sup>5</sup>Characteristic Differences Between Recall and Recognition, *Amer. Jour. of Psychol.*, Vol. 24, (1913).

<sup>6</sup>La Recognition, *Archives de Psychologie*, Vol. 11, (1911).



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range in this case varied between the 0 and 90 per cent points, but the actual range was, of course, much smaller.

With my cards thus standardized and properly marked, I turned to the experiment on recognition proper: One of the critical cards, called the normal, N, was exposed for a definite time, say 5 seconds, among a fixed group of other cards. After an interval of 20 seconds, during which time the observer was required to retain in memory as much of the material he had just seen as he possibly could, the group was exposed once more for five seconds with the normal card replaced by the variable, V. The subject was then obliged to say whether the second exposure was identical with the first, or whether one card in it was new, and if so, which one, and how did it differ from the one it had displaced.

The subjects, from four to ten in number, who participated in this experiment were trained psychologists. They had never seen the cards before, of course, nor were the same cards, whether critical or fillers, *i. e.*, those that constituted the milieu, ever used twice with the same observer. The various factors that I could vary in this experiment were: 1, degree of similarity; 2, length of exposure; 3, size of exposure, or the number of items exposed. I could also have varied the interval between any two exposures, but as the primary object of the investigation was to establish a relation between recognibility and degree of similarity, this last factor was allowed to remain constant, while the other three were altered.

I found, after recording many hundreds of judgments, that there is an inverse relation between recognibility and degree of similarity, the one being to the other as  $x:100-x$ . That is to say, where the amount of similarity between the variable and normal cards was 0%, recognibility was 100%; *i. e.*, the substitution was recognized every time. Where the amount of similarity was 50%, recognibility was 50%; *i. e.*, the substitutions were recognized only half the number of times, and so on up to the point where the substitution of an identical card was never recognized as new; and this, of course, is equivalent to saying that it was always identified as the same.<sup>7</sup>

In all the foregoing instances the substitution was made in the same environment in which the normal was originally seen. The question then arose in my mind whether this inverse relation between recognibility and degree of similarity would obtain if the variable card

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<sup>7</sup>This holds true for groups ranging between 3 and 6 cards exposed at the rate of one per second.

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were shown, not in the same, but in a totally new setting, in new surroundings. In short, the problem I set to solve was this: Does the feeling of familiarity or strangeness which is aroused by the general environment so color consciousness with its own particular tone as to make a new item appear familiar in the one case, and a previously experienced item appear strange in the other; or is the influence one of contrast rather than fusion? If it is contrast, then the exposure of a previously experienced item in a new setting ought to yield a larger number of correct recognitions than its exposure in the old setting. If it is fusion, then a previously experienced object exposed in a new environment should be recognized less often than in the old environment.

Table I gives the results of the experiments bearing on this question. The first horizontal line (%S), gives the similarity scale. The second horizontal line shows the per cent correct recognitions (%C), when the variable card was exposed in a new environment (N. E.). The third line contains the per cent correct recognitions when similar kinds of substitutions were made in the old environment (O. E.). The length and size of exposure were the same in each instance, *i. e.*, groups of five cards exposed for seven seconds.

TABLE I.

%S	0	25	35	45	55	65	75	85	100
%C in N. E.....	100	100	100	95	92	80	75	44	71
%C in O. E.....	98	90	85	79	74	61	56	17	95
%C (N.-O.) E.....	2	10	15	16	18	19	19	27	-24

From the foregoing figures it would appear that the new environment facilitates discrimination while it inhibits identification. Because we see that when similar (not identical), picture postal cards are substituted they are *less* often mistaken for their mates in the new than in the old setting, whereas the repetition of one identical card is *more* often mistaken for a different card in the new than in the old setting. As a matter of fact, however, only the last proposition is true, that is, the new environment inhibits recognition in general; it does not facilitate discrimination.

The proof is this: the figures given in the second horizontal line represent the judgments of "all changed," "all new." Now, as a matter of fact, all cards were changed objectively in all instances except those where S=100%. And while my subjects were able to point out the similar card in the new environment, they were not able to state in more than about 50% of the cases how it differed from its analogue. Therefore, inasmuch as the new setting caused my subjects to declare

in 29% of the cases that all cards were new, when an identical card, *i. e.*, a card of 100%S was repeated, it also must have influenced them to make the same kind of a judgment when a card of less than 100%S was substituted, irrespective of whether they perceived the difference between this card and its analogous one or not. Only we must not assume that the tendency was just as great with each diminishing degree of similarity. For certainly when a card of 65%S was substituted, the amount of difference within it would have a tendency of its own to elicit the judgment of change, and likewise when a card of only 25%S was substituted it would have a still greater tendency of its own, apart from the influence of the new setting, to elicit the judgment of difference. And in general, less and less error would be attributable to the environment as the similarity of the critical items diminished.

Since it is our desire to establish the relative influence of new and old environment on recognibility, it is imperative that we separate the errors due to the similarity of the critical cards themselves from the errors due to the different settings. When a critical card of 100%S was substituted in the old environment, *i. e.*, when the entire group of five cards which were shown in the first exposure were presented again in the second exposure, the subjects declared some one of the cards to be new in 5% of the cases. But as this 5% of error was made with reference to any one of the five cards, the probable per cent of error made with respect to a particular card was  $1/5 \times 5\% = 1\%$ . Hence we may say that the conditions of the experiment were such as to contribute one per cent error. Subtracting this amount from the errors made when one identical card was repeated in the new setting, leaves 28% as the actual index of lack of identification due directly to the suggestible influence of newness or strangeness arising from the new or strange environment.

Since our general law of ideational recognition says that recognibility varies inversely as degree of similarity, and since, as we have just seen, the amount of error attributable to the new setting is inversely proportionate to the amount of similarity in the critical card; therefore, if we multiply the above index by any value of S and subtract the product from %C corresponding to that value of S, we shall obtain the per cent correct recognition made for the card itself, apart from the disturbing influences due to the new environment.

Table II contains these corrected results for recognition in new surroundings as compared with the results of recognition in the same setting.

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TABLE II.

Per Cent Correct Recognitions when Cards of Different Degrees of Similarity were Substituted in New and Old Environments.

% S	0	25	35	45	55	65	75	85	100
% C in N. E.....	100	93	90	82	77	62	54	20	71
% C in O. E.....	98	90	85	79	74	61	56	17	99
% C (N.-O.) E.....	2	3	5	3	3	1	-2	3	-28

The figures in the last line give us the per cent of false recognition for each value of  $S < 100\%$  due to the influence of the old environment (O. E.). If we take the average of these figures, we obtain 2.5%.

Hence we may conclude that whereas the observation of a previously experienced object in a new setting will inhibit recognition to the extent of 28%, the observation of a similar object in the same setting will give rise to 2.5% false recognitions. Or in other words, the suggestibility of newness arising from a new situation is more than 11 times as strong as the suggestibility of sameness arising from a previously experienced situation.

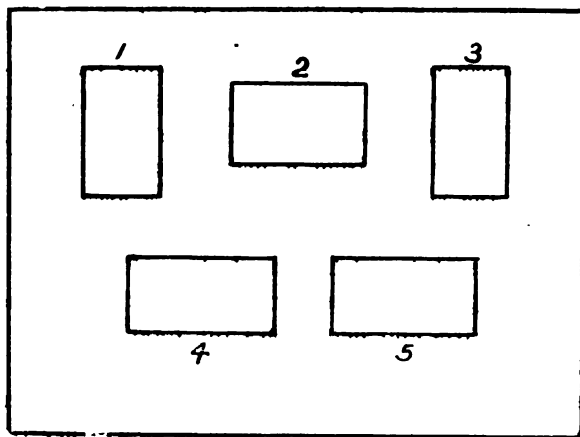
Katzaroff in his work found that the feeling of subjective certitude arising from the recognition of certain parts of an item spreads itself over the rest of the parts and determines the total certainty, *i. e.*, the total recognition of sameness or difference, whatever it may be.<sup>8</sup> To put it in his own language, "The feeling of certainty appears to be more or less contagious." But he does not tell us whether this feeling is more or less contagious according as it springs from the feeling of familiarity or the feeling of strangeness. In view of the absence of a positive statement from him, then, we turn to Meumann, the only other psychologist who, to our knowledge, treats of these two opposite feelings in a way that is pertinent to our discussion. He tells us that the feeling of strangeness produced by acoustic or visual complexes makes a deeper impression on consciousness than the feeling of familiarity.<sup>9</sup> The new items rise into consciousness with much greater definiteness than the half-known ones. The introspection of my own subjects showed not that they perceived or comprehended the contents of the new picture post cards better than the contents of the old, but that they saw at a glance that the new were nothing like the old, and so they slid right over them, to use a phrase that was quite common in the rendition of the introspection. Some of the observers even declared that the feeling of strangeness seemed to gather momentum in proportion as they kept noticing more and more new cards on the sec-

<sup>8</sup>Op. cit. p. 57.

<sup>9</sup>Archiv für die Gesamte Psychologie, Vol. 20, (1911), p. 36.

ond exposure. From the above statements, therefore, and from our own facts, it would seem that the conclusion we have formulated concerning the relative influences of new and old environment on recognition is correct.

Yet in order to test this matter more thoroughly I made one grand experiment, in which 80 college students, divided into groups of 20, participated. I exposed a set of five picture postal cards for five seconds, pasted on a black card board, and arranged and numbered as the following figure shows:



*Fig 1.*

After an interval of 20 seconds the same group was exposed for five seconds once more. I then asked my 80 individuals to state in writing whether all the cards of the second exposure were identical with those of the first, or whether any one of them was different, and if so, which one.

The results showed that 75% of the individuals identified all five cards—and that means each particular card—successfully, while 25% failed to recognize one of the five cards. The probable per cent of error which fell to the lot of any particular card was, therefore,  $1/5 \times 25\% = 5\%$ . Inasmuch as the subjects wrote down the number of the card which they thought was new, I had the data from which to calculate the exact number of times that each particular card escaped identification. The errors were distributed as follows: 4% of the individuals failed to identify card No. 1; 4% failed to identify card No. 2; 2.8% failed on card No. 3; 4%, again, failed on card No. 4; and 10.2% failed on card No. 5. The reason why so many mistook the fifth card for a different one on the second exposure is that it did not stand out

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in sharp relief from its background, being the picture of a lighthouse as seen on a moonlight night. It was rather dark gray, and, being pasted on a black background, many of the subjects could not see it clearly. We are justified in saying, therefore, that other things being equal, the probable error made with respect to any particular card lies between 4 and 5%.

After this I exposed a different group of five picture post cards, arranged and numbered in the same order as the previous one, also for five seconds; and after an interval of 20 seconds I re-exposed *one* of these five, No. 4, among four new ones arranged in precisely the same way. The second exposure was five seconds. I then asked my subjects once more to record in writing whether all the cards of the second exposure were *different* from those of the first, or whether any one of them had been seen in the first exposure, and if so, which one.

Fifty-six per cent of the subjects recognized the card I repeated as having been seen before, 3% were in doubt about one of the new ones (but not the same one), while 41% failed to recognize the repeated card, i. e., declared all five cards to be new. Thus we see that when a single item is re-exposed for the second time in a new environment it will escape identification 44% of the times, whereas if it is re-exposed in the same environment it will escape identification only about 4% of the times. Therefore, the ratio of failure to identify an object in a new environment as against failure of identification in the old environment is as 11:1. This ratio is considerably lower than that obtained with different subjects under more exact conditions of experimentation. But it is sufficiently high to show that the present police method of identifying a person of whom no anthropological records exist as yet, namely, that of bringing the witness to the police court and have him observe the suspect in surroundings totally different from those in which he was originally seen, is wrong, is contrary to the psychology of recognition, and affords the criminal altogether too much opportunity to escape identification, and thereby to foil the ends of justice.

The proper way to obtain successful recognition is not to bring the witness into the police court, but to bring the supposed lawbreaker to the scene of crime and to have the witness look at him precisely in the same surroundings and from the same angle at which he saw him originally.

The reason for this is that recognition is not primarily an ideational process, but is rather an affective process, and like all affective processes depends upon something more than mere volition or men-

tal effort. Recognition does not depend on memory, neither does it depend on imagery; these factors merely serve to strengthen it. It is a primary act of consciousness; it is more like an attitude of the entire organism. The individual had been thrown into a certain attitude on a former occasion, only when the same attitude is aroused once more will recognition take place. But the arousal of the same feeling, the same state of mind is most easily assured when the person is brought into the same situation, into the same environment and subjected as nearly as possible to the same influences that he experienced when he first perceived the object of recognition.

Recognition is not an act like that of recalling a fact or repeating a performance. If I know here and now that Woodrow Wilson is president of the United States I can express that fact in China, Germany or Egypt as readily as in Washington. But if I have seen his private secretary only for a short time in the White House, I do not think I shall recognize him as readily a month or two later in Berlin as I would if I were to see him again, seated at his desk in the same office where I first met him.

Before I undertook this investigation, I thought just the opposite was true. It seemed to me that a new environment should facilitate recognition, because it would act as a contrast to the previously experienced object; just as complementary colors tend to intensify each other by contrast. Indeed, when I made inquiry among some of my friends, I found that nearly half of them believed that new surroundings would aid identification. I fancy this view is quite prevalent with the general public. Do we not, as a matter of fact, often hear the statement made by American tourists that it is very easy to recognize a fellow countryman abroad? Such statement, however, is without significance, because it does not tell us whether it is *easier* to recognize an American abroad than at home. The only reason why we hear it at all is that the feeling of recognition does not flood our consciousness every time we meet an American in his native land, whereas this feeling may readily flood our consciousness when we meet a person in a foreign country, who dresses and talks as an American. But that is nothing strange, for a little reflection will show that we also fail to experience the feeling of recognition every time we look at our household furniture, at our watch or fountain pen? The reason is that these things, like the American at home, are so familiar to us that they have become part of us; our attitude towards them has become fixed. In other words, our reaction towards them is largely a matter of habit, and is directed from a lower level of consciousness.

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And so we may conclude that recognition is more difficult—approximately 20 times more difficult in a new environment than in the old.

It would not be fair, however, to leave our discussion at this point without stating the opposite set of facts. Granting that identification of the same item is easier in the old environment than in the new, what about the discrimination of similar items? We have seen from Table II that if two similar objects, A and A<sup>1</sup>, are exposed successively in the same setting they are mistaken for each other about 2.5% more often than when perceived in different settings. Therefore, to have the suspect observed at the scene of crime for the purpose of identification may result in false recognition, *i. e.*, an innocent person might be identified as the guilty one. Whereas such a thing is less apt to occur under the present method of identification, where the supposed criminal is observed in a new setting.

The only answer we can make to this argument, which must not be dismissed too lightly, is that on the whole the average number of false recognitions resulting from the influence of the environment is not very large. It is true that if a person approaches the same spot where he has been held up, unmercifully beaten and robbed, his mind will be so flooded with recollections of the sad experience, due to association of ideas; hence, if two persons, leading a third one, come up and ask him at that very instant, "Is this the man who robbed you?" he will be very apt to say yes, whether the suspect is the guilty person or not. But it is very improbable that he will blindly connect the suspect with the crime if one of the detectives simply introduces him to the suspect and to another person, say the other detective, and merely asks him if he had ever met either of them before.

We said that 2.5% is the probable amount of false recognition that will result from the influence of the old environment, but this includes the false recognitions made with respect to items of rather high similarity. If we direct our attention at items of 0%S, we find that there was only 2% of false recognition (Table II). But we find also that there were 3% false recognitions with respect to any one of four items of 0%S in a totally new environment. Hence the probable per cent that fell to any particular card was 3/4. Subtracting this from the former value leaves 1 2/5% as the probable amount of false recognition that might result directly from seeing a thing for the first time in a setting where something else had been seen before. Now, this is a very small quantity indeed, as compared with that which rep-



resents the probability of escaping identification with the present methods employed.

But in this connection we must ask ourselves what is the average similarity between any two human faces? Obviously, this question is too broad. The similarity may vary from zero—as between the faces of a negro and a white man—to 95% on our scale—as between identical twins. Apparently the question must be narrowed with respect to race. But also it must be narrowed with respect to sex, for the differences in the external appearances of man and woman are surely as great as differences of racial color. Finally, the question must be narrowed with respect to age. Nobody would mistake a middle-aged man for a child, nor a youth for an old man. Here, then, are three distinct divisions: race, sex, age.

Whenever a description is given of a suspicious person or of a person observed in the act of crime, the first thing mentioned is the sex; the second thing mentioned is whether he or she belonged to the white, yellow, brown, red or black race; and the third is whether the suspect was juvenile or mature. Color, sex and age constitute separate genera, and so are incapable of confusion under any circumstances. Hence our question, what is the average similarity between any two faces, means faces within the same category of color, sex and age.

Now it is well known that, other things being equal, individuals of a given race are distinguishable from each other in proportion to our familiarity, to our contact with the race as a whole. Thus to the uninitiated American, all Asiatics look alike, while to the Asiatic all white men look alike. I admit that the identification of a foreigner in the same environment in which, not he, but a member of his race had been seen before, might result in false recognition. But this is possible under any circumstances, since it is due to incomplete perception of distinctive qualities.

But let us confine ourselves to the physiognomy of the white race. What is the facial similarity of any two such beings? The differences in human features, as Galton tells us, are enormous,<sup>10</sup> as demonstrated by the fact that we are able to distinguish a single face from thousands of others. He believes, however, that fundamentally there is much resemblance, and this he tries to prove by composite portraits. Yet, upon examining his own figures, we are led to conclude that this similarity which he calls great, is not above 5% as measured by our similarity scale.

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<sup>10</sup>Inquiries into Human Faculty.

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The facts are these: Galton made composite portraits of 57 hospital patients (he does not tell us whether of the same sex or not, but they must have been), suffering from tuberculosis. One composite photograph he made of all 57 patients, another of 27 of them, a third of 28, and a fourth of 36. It should be borne in mind that his category of selection had been pretty well shaped and moulded by nature before he came to it. They were either males or females, of approximately the same age, their features similarly modified by the same kind of disease. Yet, in spite of the selectiveness of his group, no two of the four composite photographs were identical. He says that all four composites were closely alike. But what that "closely" means, we do not know. Assuming, however, that it corresponds to 90% on our similarity scale, then taking those two composites that contained the minimum number of components, 27 and 28 respectively, we can compute the similarity between any two components that entered into each composition, by dividing 90 by 27 in the one case, and 90 by 28 in the other. That is, the similarity between any two components is about 3.3%. We believe, however, that it is much less. The exact amount of similarity between the features of individuals belonging to a given class, as fixed by age, sex and color, can easily be determined, however, by finding out the minimum number of components that must be combined in all possible permutations, in order to form two indistinguishable composite portraits. If we then divide 100 by this number, we shall get the similarity in terms of per cent. It is to be regretted that Galton did not do this.

We may conclude, therefore, that even within close natural, but not consanguineous limits, the similarity between any two human faces is so small, that it would fall considerably below 20% on our similarity scale. And we show in our larger work<sup>11</sup> that 20% similarity is practically the same as 0% as far as discriminability is concerned. That is, objects that are 20% similar can be discriminated from each other as easily as objects of 0% S, and this holds true irrespective of the kind of environment in which recognition takes place. Hence, there is no danger of false identification by our method resulting from physiognomical similarity enhanced by identical setting. On the other hand, it has the advantage of yielding between 28 and 40% more successful recognitions than the present method.

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<sup>11</sup>The complete results of this investigation, including those which tend to solve the problem of illegal imitation, will be published under the title of Recognition and Discrimination, in a forthcoming issue of the Psychological Review Monographs.

## THE SCHOOL IDEA IN PRISONS FOR ADULTS.

ALBERT C. HILL.<sup>1</sup>

The attitude of the public towards its criminals has never been very kindly, just or intelligent. Hatred, revenge, cruelty, indifference, Pharisaism, exploitation have characterized the conduct of society towards those, who, for one reason or another, have been branded as criminals. Badness has often been tolerated and even condoned, so long as it did not end in conviction by a court, but the convict and the ex-convict have always suffered from the neglect and inhumanity of man.

A change in public sentiment, however, is now in progress. Society is becoming more and more sensitive to the sad cry of neglected children and to the despairing appeals of helpless and hopeless adults. The sentiment of human brotherhood is growing stronger and the call for help meets with more ready response than formerly. The sense of duty to the unfortunate and fallen is becoming more acute and a new conception of the relation of man to man is slowly developing. Even prison walls no longer isolate men from the sympathy of their fellows; a kindly purpose and a helping hand are sometimes found within these grim barriers.

The change of view regarding the treatment of criminals has, in some quarters, been very rapid. The pendulum is swinging fast from one extreme to the other. The futility of punishment seems to be quite generally admitted; the idea of rewards is now prevalent. Special privileges, honor badges, greater freedom have taken the places of the water treatment, the dark cell and short rations, as inducements to improve conduct. Radical changes are being made in the physical environment to secure the health and comfort of the men. Volunteers are entering prisons as inmates to get first hand knowledge of what is going on there and vivid and sometimes highly colored accounts of inside conditions are being published.

The mistakes of the past in prison administration have been so numerous and serious that reforms of the right kind are very much needed and will be heartily welcomed. The genuineness and permanency of reforms, however, depend upon their being carefully studied beforehand and based on principles well tested by experience. Altruistic impulses, admirable in themselves, must be governed by intelligence to make them effective in attaining beneficial results. Well meaning

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<sup>1</sup>Of the New York State Education Department; Inspections Division.

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efforts to help individuals and communities sometimes do harm rather than good. Knowledge and judgment are specially necessary in dealing with men and women who have been segregated from society for violating its laws.

Education, in its comprehensive sense, and environment, which may be regarded as the same thing, are the fundamental and most important matters that society has to consider. They make individuals what they are and shape the community, state and nation. They include all the influences that act upon body, mind and morals, from the cradle to the grave. They develop, if, indeed, they do not create both vice and virtue, the criminal and the saint, the enemy of the social order and the zealous philanthropist. There is a growing consciousness that what is wanted in life must be put into homes, schools, and public places. When society really decides to rid itself of vice and crime it will follow the wise maxim of Solomon and train up the children in the way it wishes them to go; it will study and practice *euthenics* as well as *eugenics*.

Education and environment must be relied on also to undo, in the prisons, the mischief they have done on the outside. If they can do nothing, reformation is impossible, the case is hopeless. It is evident, however, that the environment surrounding men in prison must differ from that which was so instrumental in sending them there, if they are to get any benefit from it. It cannot be the same; it cannot be worse; it must be better. In the past it has been worse so that prisons have been called "schools of crime." At present two views are held, one that the prison environment should be the same as that outside, the other that it should be in some respects better. The latter may be called the ethical or school idea. According to this view prisons are "schools of character."

School is the fundamental concept of the movement to promote the welfare of society. The prison school is an effort to organize prison activities for the uplift of the whole prison community. It is an idea rather than a time or place; it is, broadly speaking, the whole prison working as a unit for a single end. Its aim should be to create the proper environment for restoring the inmates to mental and moral health. Its effect upon the prison community is a resultant of all the constituent forces.

It might as well be admitted at once that the school idea thus defined is as yet more a vision of what ought to be than a statement of a reality. It is not yet fully endorsed by prison officials and gets scant attention from reformers and the public. Gov. Foss, in his excellent

article on the "Ideal Prison," does not mention the school. The various individuals and societies devoted to prison reform do not seem to realize the tremendous importance of education and environment in the treatment of criminals. Much is very properly said of air, light and food; of recreation, amusement and sport; of probation, parole and pardon, but the mental and moral side of the task of preparing men to return to society as safe and sane citizens has thus far been given little thought. Effort seems to have centered on reproducing in the prison the environment of the outside world which helped materially to put the men behind the bars.

Everybody seems interested in securing the personal health, comfort and enjoyment of convicts, but their mental and moral sanitation are still very much neglected. Many officials regard a ball game or a moving picture show more important to the men than a school exercise. The one open door to reform is made more or less inaccessible and unattractive by the opposition or neglect of those responsible for its use. The school idea needs to get a firmer grip on the public mind in order to fully accomplish its beneficent purpose. It should be extended and developed until it is an active, permeating force in every prison in the country.

Schools in penal institutions naturally divide themselves into two classes, training schools for the young and reformatories for adults. The first kind of school seeks to overcome acute manifestations of evil intent by aiding the growth of latent impulses and as yet undeveloped capacity; the second appeals to the judgment of mature minds in an effort to secure reversals of decisions deliberately made and changes in modes of life fixed in the grooves of habit. Both rely upon environment as a means of attaining their end but the one seeks the environment suited to youth, the other that adapted to mature minds. One must use the methods of the home and the public school, the other must go to the business world, to the library and to the debating club for its models. It seems to be a serious mistake to apply reformatory methods to schools for young people in the formative stage, and an equally harmful blunder to deal with adults as though they were still children. The two classes of schools are quite distinct and this fact should be kept in mind in dealing with social offenders. Children may be educated; adults must educate themselves.

Reformation is mainly the choice and act of the individual needing it. He must reform; he cannot be reformed by others. He has reached full stature in character; his habits are fixed; he no longer has the growing power of the child and youth. He has gone to the end of the

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road and must find a way back or perish. Can he do it? Will he do it? Can anything be done to help him do it? The answer to the first question is, he can. The answer to the second rests with the man himself. The state, which assumes control of the convict, must answer the third.

Can a bad man, who has been convicted of a crime and sent to prison, reform? The conclusive argument in the affirmative is that men of the worst character have faced about and become trusted and respected citizens. On the other hand, the old prison idea is that the convict is a hopeless case and this pessimistic view persists in the minds of many. The school idea is that reformation is possible and that something positive and active should be done to promote it. It maintains that the door of hope and opportunity must be kept open and the way made clear and inviting back to a life of honesty and self-respect. Men must be given a last chance which to some of them may have been the first also.

It is not claimed that the way to reform is easy or that a large percentage of the men in prison will make a radical change in life and character. The way out of the labyrinth is hard to find and harder to follow. There is no disguising the fact that nothing worse can happen to a man than being stamped a criminal. He may be unfortunate in business and regain his financial standing without much difficulty. He may be stricken with a serious disease and have a good chance to recover. But when the prison gate closes upon him his chances of ever regaining a place in society are very slim indeed. If his sensibilities are still acute, crushing remorse and the deadly chill of despair come upon him. He staggers beneath the blow and prays for death to end his misery. Physical pain is nothing compared with the torture of such a fall and failure. The message of the school is that there is a way out for the man who wishes and strongly wills to escape from moral thralldom, but through a rough and thorny path.

The belief that some men will reform under proper conditions is based to some extent on a knowledge of the kinds of men found in prisons. The men bearing the mark of criminals vary in character like other men. They are not all bad, and few of them are lacking in good qualities. If a hundred of the worst men in the country could be selected it is doubtful whether a majority of them would be found in prison. There is no criminal class. The microbe of criminality, however, is probably in every human being and needs only favorable conditions to develop. Crime is to a large extent a conventionality. An act, good or bad, in itself may be made a crime by statute. The neces-

sities of society and the desires of individuals have evolved the catalog of crimes and the penal code. What was a crime yesterday may be permitted to-day, and what is lawful now may be a crime to-morrow. Those who will not obey the will of the majority as expressed in laws are segregated and called criminals. This is a rough and ready way of safeguarding society, though it rests on no very sound basis of ethics and sometimes results in sending fairly respectable men to prison. Most men in prison, however, are in varying degrees mentally and morally unsound. They have fixed habits and modes of thought that are anti-social and dangerous. There are serious warps in their characters that must be removed before they will be fit to return to society. They must reform or continue to be a menace to the people with whom they live and to themselves. In a community made up of human beings of so many types, under conditions favorable to reflection, regret and the formation of new resolves, it is fair to assume that some will grasp a life line thrown out to them.

The elements of prison environment which determine the quality of the community life include the general administration of the prison, the religious atmosphere, the specific school work, the reading matter provided and the inmates themselves. Personality dominates in each of these spheres of activity.

The warden is the most important factor in the prison world. He selects officials, determines the rules of action, establishes the ideals that shall govern and inspires conduct. He is responsible for everything, and without his active co-operation little can be accomplished. He must be a rare man to measure up to the demands upon him for making the prison a "school of character."

The chaplain controls the religious atmosphere of the prison. He is in a position to give tone to the whole community life by reason of being in close personal touch with each individual. He has a difficult problem to solve. All his energies of body and mind must be taxed to their utmost to accomplish his part in the solution of the prison problem. He must be a man of high character, ready sympathy and good judgment. There is no place in a prison where the influence of a full orb'd man counts for more than in the chaplain's office.

The head teacher is the exponent of the school idea in its specific activity in the class room. It is his function to arouse and direct mental and moral force. He should co-operate with others in maintaining a proper environment throughout the prison. He needs to be well informed, skilled in the art of teaching and possessed of keen insight into human nature.

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The librarian determines to a great extent the influence of books upon the character of the men. He is, in fact, an important part of the teaching force. It is his function to advise and direct the men in their reading and to discuss with them what they have read. The library is a large factor in the prison work and the kind of books in it and the way they are used measure its influence towards reformation.

The inmates themselves are a factor in prison environment. The spirit that prevails among them greatly helps or hinders the general uplift. The spirit of self help and altruism needs to be aroused and wisely directed. Reform to be effective must be largely a growth from within, a development in the community itself. The men must rise by their own efforts and raise others with them. They must become altruistic in order to reform themselves. They should be encouraged to assume responsibility for improving the mental and moral atmosphere in which they are living. There is an element of social virtue in every man and the capacity of helpfulness should be utilized. This is no doubt the thought of Thomas Mott Osborne in forming a mutual help association among the men in Auburn prison. Inmate teachers are employed in the New York prison schools. It seems evident that the inmates themselves should be enlisted in the effort to socialize the prison order.

In every department of the prison, the human factor must rank first in value in creating an atmosphere favorable to reform. A personality, a friend, is the most potent force in saving men. Character is contagious. Thus every officer, in the performance of his daily duties, is a teacher of good or evil. The warden, the guards, the chaplain, the head teacher, the librarian, constitute the corps of teachers of the prison school in its comprehensive and real meaning. If one of them fails to do his part the whole social body suffers.

Books are next in importance to men in creating the right prison environment. They are more available indeed than the living personality because they may be made constant and always helpful companions. They reveal men in action and tell of their experiences and achievements. They present the highest ideals in conduct and point the way to self mastery and success. They introduce the inmates to the best men and the finest deeds. They furnish useful information, material for thought, relief from mental anguish, rest and recreation. Those who will not listen to a human voice may hear the words of a great writer in their quiet, lonely hours. The printed page is the main reliance in convincing men that they may reform and that it is wise to do so. It also points the way and breathes forth courage and hope.



The environment of the outside world should not be literally copied in the prisons. The food of the strong and well is not always adapted to the sick. The abnormal mind cannot be treated in all respects as though it were normal. The harmful things that beset the pathway of ordinary people in society should not be found in prisons. For example, intoxicants, injurious drugs, weak and immoral reading matter, should be kept from convicts. Only that which is tonic and health giving should be included in the environment of men whom the state is trying to fit for a return to society.

The ordinary incentives are not the kind to use in prisons. Rewards for good behavior do not reach the disease and their effect is temporary and harmful. Men may be induced to be outwardly good, according to the prescribed standard, for a time, by the promise of immediate benefit, but no permanent change of character can be secured in that way. The economic value of prison treatment, either to the men or to society, is no measure of its real value. Preparing men to earn a living is important, but it does not in itself ensure reformation. Men are not bad because they are poor nor good because they are prosperous. The defect in much that is being done to rehabilitate the convict is that it is merely economic and sensuous, an appeal to the lower and grosser instincts. Many of the modern notions regarding the physical conditions that should surround prisoners are excellent and should be put into general practice. But when all that wholesome food, pure air and sanitary surroundings can do has been done, the real task is only begun. The root of the evil that must be reached and restored to sane activity is a mind diseased. The spiritual life, the mind and the emotions must be stirred. This is what the school seeks to accomplish.

Any method of treatment likely to lead to reformation must involve hardship to the men. The discipline of a prisoner must be strict. The notion that the men should be allowed to follow their own inclinations entirely is evidently fallacious. Convicts as a class are, undoubtedly, not as bad as they are sometimes painted, or as is commonly supposed, nor are they as reliable as some sentimental social workers would have us think. It is safe to say that they are no more trustworthy than people outside where policemen are still found to be necessary. Super-sympathy for wrong doers is unjustifiable and unwise. Crime must be abolished, though it is humane and desirable that as many criminals as possible be saved. The school idea favors strict discipline; it only asks that it be intelligent and just. The punishment that accomplishes a good purpose is wise. Will the individual

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man or the social unit be benefited by this penalty? If so, it is proper and should be imposed. Special privileges should not be granted. Favoritism in prison is an enemy to reform. The men should be made to see the necessity of uniform rules and regulations and enlisted in the effort to maintain them. The discipline, however, must be of the right sort, not arbitrary, fitful and vindictive, but reasonable, persistent and kindly.

The ultimate success of the school idea depends upon an aroused public sentiment in its favor. Without such aid the best results cannot be expected. The conscious effort to improve prison conditions has scarcely begun and so far has been directed more by impulse and sentiment than by deliberate judgment based on knowledge. It has been influenced more by headlines in newspapers than by a careful and comprehensive study of the problem and the way to solve it. There has been a large element of exaggeration in what has been written about prisons. No prison is either heaven or hell. All prisons, however, may be made permanently better by improving the environment along the lines suggested.

The schools in the five prisons for adults in New York rest on the fundamental ideas that have been considered and are typical of what has been so far undertaken. In practice they have come as near the ideal as conditions would permit. Their work has not yet been as comprehensive as originally planned. Lack of time, room and help have delayed their development. There has been a constant fight with illiteracy that has taxed the capacity of the schools and retarded extension into the wide and fruitful fields of learning and thought. A foundation has been laid, however, and it may be hoped, if not predicted, that the idea will grow until the prisons of the state are in reality "schools of character."

The main features of the system may be briefly stated as follows:

1. School rooms are provided and equipped for twenty men each.
2. A civilian head teacher is in charge of each school.
3. A corps of inmate teachers is selected from the best qualified in scholarship, character and interest.
4. The work is divided into twelve parts called standards, each requiring from two to four months for its completion.
5. Uniformity and co-operation are secured by frequent conferences of the head teachers and by the advisory oversight of the State Education Department.
6. The schools are in session during each week day throughout the year, and each man is in the class room one hour each day.

7. The school day is divided into four periods, two in the morning and two in the afternoon.

8. The men come from the shops in companies and return at the end of the period to make room for others.

9. Personal benefit is the only incentive offered for study and there are no penalties for failure.

10. Extensive use is made of mimeograph lesson sheets. Most of this work is done outside of class.

11. School work is co-ordinated as far as is practical with the needs of the prison in preparing men for various positions as stenographers, bookkeepers, etc.

12. The steps are: (a) learning to speak, read and write the English language; (b) utilizing the ability acquired in getting and expressing knowledge of a practical nature; (c) using knowledge as material for thought and discussion on fundamental questions of government, business and morals.

Great importance is attached to small classes. There is no mass instruction by lectures. The men do the work and thus become self reliant. Each man takes part in the recitation, reads aloud, asks and answers questions, takes part in discussions, reads outside of class and reports results.

The ethical value of education is emphasized. The aim is to make the pursuit of knowledge a pleasure rather than a burden, a reward in itself rather than a means of escaping punishment. The constant appeal is to a desire for knowledge for its real worth, for the benefit it will afford in all the future. It is believed that school work carried on in this way is a most powerful incentive to reform.

It is not possible to measure results from prison school work, in regard to its permanent effects on character and success. The test comes after the men pass from the knowledge of prison officials. They are lost sight of in society, and their future is unrecorded. Statistics of reformation are unreliable. There is no way of telling how many are permanently restored to honest, law-abiding citizenship. The immediate effects are known and they are manifestly good. It is only fair to conclude that many are permanently helped.

The use of inmate teachers has been criticised. However, this practice, dictated by necessity in the New York prisons, is in harmony with the notion that the prison community must rise in part at least by its own efforts. The men are asked to help one another in the school, and have responded nobly to this call to altruistic effort. If the best men in the community are made teachers the plan is quite up to

## SCHOOL IDEA IN PRISONS FOR ADULTS

the standard of outside society in the choice of teachers. An inmate is in closer touch with his fellows than a civilian could readily be. He knows the needs of the men and how best to supply them. It is by no means self evident that inmates are not, all things considered, the best teachers of their fellows. At least the question is not settled, and the objections of casual observers are not conclusive. No doubt more civilian teachers are desirable. It seems especially essential to the best results that the librarian be a civilian.

An eminent prison worker criticises the schools because, as he says, they do little more than teach men to read and write. If they did no more than this they would, nevertheless, amply justify their existence. A man who can read and write well has the means of unlocking the storehouses of knowledge and inspiration. He may associate with the wise and great of all time and all countries and gather hope, inspiration and suggestion from innumerable sources. He may stand on the shoulders of giants and see farther and accomplish more by reason of this acquisition. Gaining power to read and a taste for good reading is the main step towards an education. Learning to speak, read and write the English language is worth everything to the foreigner and does more to fit him for life in this country than anything else could do. It is true that the first thing the schools in New York prisons do is to weed out illiteracy. It is a fact, also, that there is so much work of this kind to do and the facilities for doing it are so limited that men are often dismissed from school too soon in order to make room for others more needy. Every prison built hereafter should have a separate building exclusively for educational purposes.

But speaking, reading and writing are not in fact all that is taught in the prison schools of New York. These are regarded as but means to a still greater end. The goal always in view is the utilization of reading as a means of creating a better mental and moral environment. Books furnish food for thought, and when men begin to think, they are in a condition to improve. False reasoning is a very noticeable defect in convicts. This results from insufficient knowledge, unusual experiences, an exaggerated sense of wrong, or from actual injustice. The school aim is to remove the fog and enable men to see clearly, and reason correctly.

The real fight of the New York prison schools for existence and efficiency is with the industries. The complaint is made that the day sessions interfere with the output of the shops. One of the most valuable features of the schools is that they meet in the day time. This adds greatly to their efficiency. Night sessions are in fact of compar-

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atively little value to the majority of the men. Friends of the schools maintain that the loss of time in attending school is so small as to be negligible, and that it may be easily made up by increased efficiency in the shops; and that a material loss in output, due to the schools, would be no valid argument against them. Prisons are charged with the duty of returning men to society morally sound as well as economically efficient. Prisons should be run in the interests of the men and of society, and not for the products of the industries merely. The fallacy that has governed in the past should no longer control in prison management.

The school, in the restricted sense of the term, cannot bear the whole burden of making good citizens in society or of leading bad ones to reform in prisons. There must be a complete chain of influences, and every link must be strong. Public education is weak because it is too much segregated in schools. The home and the street are as truly factors in training children as are the schools and the church. Society should make all the environment of children wholesome and invigorating. The moving picture showman should be looked after as well as the teacher. Prisons have unusual control of environment, and can reject whatever is not healthgiving to body, mind and soul. A thorough house cleaning, inside and outside the walls, is needed to free young and old, good and bad, from influences that undermine and destroy character. The adult must be rescued if possible; the child must be kept out of the current. There is an undertow that is dragging society down about as fast as it can be elevated. Environment is the much-neglected word that suggests the cause and the remedy for the badness and criminality that is working so much havoc and filling our prisons.

## RESPONSIBILITY AND CRIME.<sup>1</sup>

A STUDY AND INTERPRETATION OF THE LATER WORKS OF ALFRED BINET.

ELIZABETH S. KITE.<sup>2</sup>

The humanitarian spirit that is abroad in the world today nowhere manifests itself more clearly than in the desire to understand and to deal justly with that large refractory class of humanity known as criminals and delinquents. The sentiment of modern society towards its offending members has been summarized in the following terms:

*Punishment Should be Beneficial but Contained in Such Measure that it Be Not Unjust.*

To be beneficial the criminal must have sufficient intellect to relate the punishment to his act; to be just it must take into consideration his state of mind at the time it was committed.

Public sentiment recognizes different degrees of responsibility in relation to given acts. Even our newspapers bear testimony to the fact that of the many thousand crimes which every year are brought before the public, a very different sentiment prevails in regard to the culpability of the offender. Certain atrocities, such as the murder of an entire family by a parent, are at once recognized to be the deed of a maniac, upon whom it would be absurd to inflict the death penalty. In the case of an imbecile setting fire to a building, thereby jeopardizing or destroying human lives, public sentiment demands that so dangerous an individual be taken into custody, but revolts from inflicting upon the culprit the legal penalty for his deed; and this because it would be neither beneficial nor just, for since the imbecile is lacking in the power to relate ideas, he cannot be taught that fire is dangerous, therefore the punishment could have no educative value; it would not be just, because this inability to realize what he has done, makes him irresponsible for his deed.

On the other hand, there are crimes continually coming before the public which are so cleverly planned, especially co-operative crimes, such as burglary, systematic fraud, the commerce of prostitution, in regard to which public sentiment requires speedy and full application of the penal laws; in the first place, because the persons concerned have shown evidence of intelligence, of the power to make means at their dis-

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<sup>1</sup>Read before the American Prison Association Congress at Indianapolis, October 15, 1913.

<sup>2</sup>Psychologist, Vineland, N. J., Training School.

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posals serve a definite end, and are thus judged to be responsible; in the second place, because having the power to relate ideas, there is a possibility that the punishment inflicted may teach them to abstain in future from similar acts, even if it does not effect a change of heart or character.

*Responsibility Absolutely Denied to Man by a Certain School of Modern Scientists.*

In striking contrast to this world-old view of humanity in regard to responsibility, are the avowed opinions of a certain school of modern scientists.

The theory first voiced more than half a century ago by Herbert Spencer in his "Data of Ethics," amplified by later European scientists, has found perhaps its most advanced expression in an article by Dr. C. B. Davenport in the July, 1913, number of the Popular Science Monthly, entitled "Heredity, Culpability, Praiseworthiness, Punishment and Reward," in which he denies human responsibility *in toto*.

To the thoughtful reader the clear and concise statements of Dr. Davenport are productive of a decided shock, for they reduce man to the level of the brute, make him a merely biological product, the result of hereditary laws, and take conduct and destiny wholly out of his hands. He becomes a creature neither praiseworthy nor blamable in any of his acts, devoid of personality, will, and the power of choice. Romantic, heroic, or cowardly actions become alike impossible to him, for he acts as he does simply because he must. Distressing as are such ideas to contemplate, yet when men like Dr. Davenport in America, and Dr. Ballet in Europe take this stand, they cannot be ignored, but one must dig deep in order to find wherein lies our antagonism to their theories. The lucid exposition of this extreme materialistic view as given by Dr. Davenport makes this possible. Nothing could be clearer or more concise than his statements, and when taken one by one it is surprising, considering the unfavorable impression made by the whole, to find how true most of them are.

This it would seem is because Dr. Davenport, being a scientist, asserts real facts, but not being a philosopher, has interpreted all human conduct by attributing it wholly to inherent traits plus such culture as they may have received. The inhibitory mechanism which he calls a device for controlling conduct, results, he says, from hereditary determiners and has nothing whatever to do with will. His studies, excellent as they are, and original, having been confined to heredity in animals and to the inheritance of traits in man, have led him, it would

## RESPONSIBILITY AND CRIME

seem, to ignore a vast field of human evidence and positively to deny a spiritual nature in man. To his mind all punishment is unjust, and no action either good or bad is worthy of praise or blame.

### *Philosophy or the Science of Sciences Necessary for a Correct Interpretation of Phenomena.*

It is exactly in this connection that one of the soundest thinkers of modern times has said: "All the sciences have their own departments, and in going out of them they attempt to do what they really cannot do; and that the more mischievously, because they do teach what in its place is true, though when out of its place, perverted or carried to excess, is not true. And as every man has not the capacity for separating truth from falsehood, they persuade the world of what is false by urging upon it what is true." "Man," he further says, "whose life lies in the cultivation of one science to the exclusion of any philosophical view of the whole, has all the obstinacy of the bigot whom he scorns, for each exalts his one science into a key, if not of all knowledge, at least of many things more than belong to it." The philosophic habit of mind prevents mistakes of this character and enables the specialist to guard the limits within which his science must be kept—for his partial truth is true only when taken in relation to other partial truths, all of which must be considered in giving a just estimate of the whole.

### *Responsibility from the Psychological Standpoint.*

It is generally admitted, as has been shown, that children, the mentally defective and the insane, are less responsible for their dangerous acts than normal adults; that very young children are less responsible than older ones, an imbecile than a moron, a lunatic than one slightly deranged. Here it is a question of more or less; but to admit more or less is always to admit the fact, for if some human beings have less responsibility than others, then there is a form of responsibility. The question then becomes: how shall we find this norm and by whom shall it be fixed?

The lamented French psychologist, Alfred Binet, a philosopher as well as a scientist, whose untimely death two years ago cut short his work barely begun upon criminal psychology, has expressed more clearly perhaps than any one else so far has done, the scientific basis of the general belief before alluded to, in human responsibility. But it must not be thought that his views can be found put forth in any such concise form as are those of Dr. Davenport, for Binet was too compre-



hensive a thinker to permit of his believing that the complex phenomena of human action could find summation in a few terse formulas. Of such formulas Binet has said: "C'est de la littérature, ce n'est pas de la science."

By a careful study of his later works, however, we may arrive at a comprehensive idea of his view of human responsibility, and consequently of what he considered beneficial and just in punishment.

In his study upon "The Aptitude of Imbeciles" he brings forth conclusive proof that the essential characteristic of normal man is the possession of higher processes of *direction*, of *choice*, of *criticism* and of *will* by means of which it is possible for him to *pose* an end to be attained, having chosen it as desirable, and finally to make the circumstances of his life bend themselves to its attainment. To grant to man this power of choice is to admit his responsibility.

"Life," he says, "results from a continual work of adaptation of the intelligence of the person to his surroundings," but even here "there exists a hierarchy between possible acts of adaptation; there are acts which are insignificant and others which are important; there are those which have small and immediate advantages, and those whose advantages are in the distance, but immense. To know how to choose is to put in its place our lower nature, to dominate the instincts, to elevate life. The mentality of a child, of an imbecile, and unfortunately also of very many adults, and who for this reason can never rise, consists in preferring the immediate pleasure of the moment to the durable pleasure of the morrow, and who consequently develop an activity which does not calculate, does not reflect, and above all does not economize and therefore can collect no capital."

The "inhibitory mechanism" which Dr. Davenport makes a purely biological function, the result of physical determiners, is raised by Binet, to its place in the moral realm; the vital energy there stored, man is left free to conserve by means of his intelligence or to squander through uncontrolled impulse. To complete the image, let us add that moral energy, like the miser's fortune, when once spent, leaves the spender in a state of penury, with nothing for himself and nothing to pass on to his offspring. If he wish to energize his life again by storing up capital, it can only be done in one way and that is through *self-conquest*.

#### *Responsibility and Legislation.*

Let us now come to the practical problem of crime. The French nation is in advance of us in giving legal recognition to attenuated responsibility, for though we do in practice recognize it as a fact, as

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proven by the notorious Thaw case and others, yet our criminal code has nothing analogous to Article 64 of the Penal Code of France, which is expressed in the following terms: "There is neither crime nor delinquency when the accused was in a state of dementia at the moment of the action; or when he was compelled by a force to which he was unable to offer resistance."

In practice the medical expert whose intervention this article compels, is empowered by the following formula: "Investigate whether the accused was the victim of a malady whose nature impaired his responsibility and to what degree."

Dr. Ballet and others have recently objected to furnish replies using the term responsibility, because they felt that this would imply a belief in the philosophical doctrine of free will. Their attitude in this has been productive of considerable embarrassment to the courts. Binet insists that the objection is out of place, and says: "Every sensible man who admits that one is only responsible for those acts that are freely willed and freely executed, gives to the word liberty a totally different sense than its metaphysical sense; he calls 'free' an act of will which expresses our personality, and which is not under the influence of a force foreign to our person. The expert is called only to determine the responsibility of the accused by taking as term of comparison the responsibility of a normal person; is his responsibility equal to his, or less; here is the whole question. It is very precise, and there is no metaphysical argument that can prevent its being posed or being answered." Binet thus maintains the position that normal human beings are responsible for their acts, and crimes can with justice be imputed to them. The question of irresponsibility can only arise when the subject is not normal, either through lack of development, as is the case with children and mental defectives, or through disease which throws into disorder or weakens the mental faculties.

### *Moronity and Imbecility in Relation to Crime.*

Stated in its simplest form imbecility and moronity correspond to different stages of childhood, from five to eleven years. With them, as Binet says, "there is such an arrest, an insufficiency in the stages of their development, affecting alike their intelligence and their moral sense, that with double right they are placed within the ranks of the irresponsible."

Civilized nations are ceasing to consider the delinquencies of childhood as crimes, and when it is once fully grasped that human behavior depends upon mental and moral, more than upon physical development,

it will be the mind of the culprit that will first claim the attention of judge and juries. By the aid of that simple instrument, the Binet-Simon Measuring Scale of Intelligence, which at least to the tenth year is as perfect as a human instrument can be expected to be, it is always possible to decide accurately the mental age of the subject if he be in reality a child. Around the border line the difficulty of accurately deciding will forever remain, but for those whose mentality does not develop beyond that of a child of eight or nine, or ten years, regardless of the length of time they have lived, there can be no doubt of their irresponsibility. For self-protection as well as for humanitarian reasons, persons of this class must be cared for by society at large. With intelligent direction supplied from without, they can, in nearly all cases, be made not only harmless but distinctly helpful elements in the state.

*Distinction Between the Insane (aliené) and the Criminal.*

"The gravity of this distinction," Binet says, "can escape no one; in so far as it is just, conformable to Article 64 of the Penal Code, not to treat as criminals the insane, who are not responsible for their dangerous acts, in so far as it is equally urgent not to let repression be softened by declaring criminals irresponsible, who with too much complacency have sometimes been assimilated with lunatics. Society has the duty to defend herself energetically against those who are detrimental to her; and it would be disastrous if through confusion of certain medical and philosophical ideas, under pretext, for instance, that free will is a chimera or that every criminal has a diseased mind that the magistrates, the juries and the medical experts came to declare avowed criminals as irresponsible." "The capacity for imputability," Kraepelin says, "depends upon two elements: First, a faculty of intelligence; the general faculty of judging what is permitted or forbidden, what is useful or harmful, and the special faculty of comprehending the importance and the consequences of the act which one commits. Second, the faculty of volition; that is, the faculty of choosing between several possible acts, and deciding after reflection and conformable to the tendencies of one's own personality. To put it briefly, imputability depends upon a certain amount of intelligence and will." All this is very clear; evidently the two great masters of alienation, one French, the other German, Binet and Kraepelin, are in accord in recognizing that normal man has the power of choosing between several possible acts and that he is therefore responsible.

The criminal, then, is a person whose intelligence is sound. On the other hand, the intellect of the dement is more or less disordered.

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The criminal knows what he is doing, he is able to realize the bearing of his acts; the dement does not know what he is doing, and is not able to realize the bearing of his acts; the criminal is responsible, the dement is irresponsible. Lack of balance is what is essentially characteristic of dementia. "This lack of balance," as Binet says, "is composed of two elements; there is an exaggerated production of certain manifestations; for instance, an idea becomes an obsession; a false reasoning becomes a cause of continual reflection and passes to a state of delirious conception; a slight depression becomes despair, etc. This is the active element, the impulse; and its counterpart is a slackening, a weakening of the higher processes of *direction, choice, criticism, will*, by means of which a normal person effectively controls the production of his active functions."

"Certain crimes," Binet says, "are in themselves almost exclusive of the idea of alienation. For example: the fabrication of false money; fraud in the world of business, etc. These crimes require on the one hand a great liberty of intelligence; on the other hand they have essentially pecuniary, that is to say, normal motives. It is in fact, absolutely exceptional that a lunatic commits a crime by a desire for lucre. Still another indication: the association of evil-doers has rarely a pathological character because the lunatic has this peculiar trait that he isolates himself from his kind, he lives alone, he acts alone. "Criminal acts are sometimes committed," Binet notes, "by those suffering from a form of lunacy where, strictly speaking, the intelligence is intact, but vitiated by delirium or other morbid symptoms rendering the doer irresponsible. Thus a murder may be committed through hallucination or through a paroxysm of unjustifiable jealousy. There also appear from time to time criminals who simulate insanity, hoping thereby to deceive the experts and escape merited punishment. These, as Binet makes clear in his definition of alienation, are seldom difficult to discover, for as a rule, "they fall into an excess of absurdity and incoherence. Alienation has its laws which cannot be invented if they are not known."

### *The Criminal.*

How shall we then characterize the criminal?

"We may safely establish this rule," Binet says, "that the criminal is a person whose mental faculties are in a sound condition; he knows what he does, he realizes the bearing of his acts, therefore he is responsible for them."

It may seem a contradiction in terms to speak of the criminal as

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normal, but this simply means that his anti-social acts do not spring from a disordered intellect, but rather from a disordered moral nature, which condition may in a certain sense be considered normal, since its possibility belongs in its very essence to that power of choice, which as we have seen, is the distinctive attribute of normal man. The choosing of a base or evil end, does not in itself weaken the intellect; on the contrary, the intellect may develop tremendously under such conditions like the power of an athlete, trained to the utmost, that he may win in a given contest. What *does* weaken the intellect is choosing no end at all—but allowing “any old thing,” according to that most pernicious Americanism, to have sway. To this state of mind Binet has given the very technical term *n’importequism*, which is the sure forerunner of degeneracy, a totally different problem from crime.

Again we are right to call a criminal normal, because any man might under given conditions commit a criminal act if he allowed himself to do so, and having committed one such act, find it easier to commit another and so on and so on, until finally he became an avowed criminal; also such a man has in himself the power to say, “Fool that I am! My criminal acts bring me only misery and disgrace. I will rouse myself, control the brute within me, and take my place among men.” So he comes out *reformed*, his moral nature again in order, that is to say reason and will no longer slaves of passion, but passion chained and under the control of reason and will.

Not every criminal reforms, however; for there are those who deliberately prefer crime. Perhaps one of the strongest criminal characters in literature is the celebrated Tromp-le-mort, a creation of Balzac's. Through him is caught a glimpse of a subterranean world, a world of co-operative crime, with its aristocracies and its menial class, its code of honor, its laws, its fixed ideals. At every point it is antagonistic to the social order, but it is held together by a keen and ever watchful intelligence, an esprit de corps that makes it the power it is. No medical expert needs to be called when Tromp-le-mort falls into the hands of the police. There is no one who questions his responsibility. He has deliberately chosen crime because he loves hazardous adventure, because he loves power and cares to play with wealth. Comfort, ease, tranquillity mean nothing to him, he despises them all.

Although in real life there are not many Tromp-le-morts, yet there are lesser men who are also criminals, regarding whom neither judge nor jury think of raising the question of their responsibility. But unfortunately there are others who commit crimes; as we have seen, there are imbeciles and morons, there are maniacs, the obsessed, the born

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criminals; there are also a host of degenerates, as the perverts, the morally insane, etc., about whose crimes, when the occasion arises, there comes in a very grave doubt as to their responsibility.

### *Degeneracy and Crime.*

Of degeneracy, especially moral degeneracy, very little is definitely known; until more is known, Binet insists that we cease to repeat "that vague word which explains nothing." And yet the accepted meaning of the word passing from a good state to a bad, from a bad to one that is worse, when applied to humanity expresses a very real and often observed fact.

A degenerate is a being who has lost or is losing his power of choice and of will, whose personality is diseased or disintegrating, and who in very truth is often urged on to hideous deeds by a force over which he has no control. He is obsessed or possessed as if by a demoniac spirit.

Like the insane, degenerate criminals act alone and by stealth. Incendiarism, petty thieving for morbid or useless ends. Sodomy—these are some of the crimes which they commit. Mostly the mentality of this class is of a low order, but Binet himself notes that certain degenerates, sexual inverters for instance, often are possessed by an unusually brilliant intellect. It is precisely in dealing with this group that the gravest difficulties arise in deciding the degree of responsibility which such subjects retain. As has been shown, the extreme cases present but slight difficulties; it is the question of attenuated responsibility, where the accused is near the border line of normality, that the great difficulty of decision lies.

The study of criminology during the past century by Lombroso and others, "far from establishing a clear distinction between the two categories has," as Binet says, "rather resulted in confusing them. It has been proven, for instance, that the criminal presents many of the physical characteristics of the insane. Numerous studies, rather hasty it is true, and suggestive statistics, although lacking in critical sense, have shown that the criminal has a peculiar heredity; it is a criminal heredity, or insane or alcoholic, and from this it has been concluded that there is here an excuse for their anti-social acts. More than this the distinction between *crime* and *insanity* has ceased clearly to appear, and this is *much more serious*."

"To our minds, neither the accumulation of physical stigmata nor the most charged heredity is sufficient to stamp a man who commits a crime as irresponsible. We know, however, that we have here an ex-

tremely delicate question; one will always have trouble in distinguishing criminals from moral maniacs; but we must not permit our theories upon the subject to make a sort of breach through which nearly all the criminal world can introduce itself into the realm of the insane there to find impunity."

*The Practical Problem. What Then Is to Be Done?*

First it is necessary, Binet says, that a dividing line be established, even if arbitrary, between responsibility and irresponsibility, that the matter must not be left to the subjective valuation of the alienist. There are, he admits, between the two states, all the degrees of transition, as between day and night. In the latter case the law has fixed the hour when it is called day, so that, the hour having struck, a magistrate has the right to enter a private house to execute an arrest; although the fixing of this be arbitrary it works out in practice better than to allow each officer to decide for himself when the day has arrived.

More than this, even when the dividing line has been set up the question remains, what shall we do with those judged irresponsible? Shall we turn them unpunished back into the community to repeat their noxious crimes? Evidently not. For the mentally defective and for lunatic, sequestration or colonization is not only advisable but possible. With that vast borderline group, however, which offers by far the most difficult social problem with which our age has to deal, no such easy solution offers itself. Binet says: "The moment that it is proven that the accused has an attenuated responsibility the judges are indulgent and inflict penalties less severe than those designated by law; he is then enabled to repeat the act more easily. Good sense and the defense of society require, on the contrary, that he be incapacitated to do harm, since he is more dangerous than a normal person. But this is not an objection against the principle of attenuated responsibility; it is rather a criticism against our system of penalty."

The time is at hand when this most important social problem must be grappled with in earnest. Attenuated responsibility means moral disease, and moral disease is more insidious in its attacks than smallpox or tuberculosis. Modern science is finding a way to protect man from those diseases which attack only the physical body; shall we not turn our attention to that which blasts the entire being of man?

But in doing this we must not forget that while it is necessary to recognize our ills in order to rise above them, no real reform can be effected except in holding before our minds an exalted ideal that will

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lead us ever up and out of our ills. The deep lesson of the Bible story must not be forgotten; how the Israelites when bitten by serpents in the desert, were bidden not to look at their wounds if they would be healed, but at the golden serpent that was set up; so we must keep before us the perfect model lifted up that all men might be saved.

Let us then close with the words of the great Paul to the refined **Phillipians**: "For the rest, my brethren, whatsoever things are true, whatsoever pure, whatsoever just, whatsoever holy, whatsoever lovely, whatsoever of good report, if there be any praise, if there be any virtue, think on these things."



## JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER AND ELMER A. WILCOX.

Two decisions appearing in the issue of August 4, 1913, of the *Pacific Reporter*, one in *Hager v. State*, by the Criminal Court of Appeals of Oklahoma, July 5, 1913, 133 Pac. (p. 623), and the other in *Territory v. Lynch*, by the Supreme Court of New Mexico, May 31, 1913, 133 Pac. (p. 405), it seems to me contain expressions that are very significant.

The Oklahoma court, after reciting quite fully what it evidently deemed an outrageous method of proceeding on the part of the prosecution, said: "This court stands squarely for the doctrine of harmless error, but it is equally committed to the doctrine that fairness must prevail in the trial of criminal cases. We will not tolerate police court methods in courts of record. Trial courts should confine the cross-examination of witnesses to legitimate subjects of inquiry, and should not permit a witness to be brow-beaten or asked insulting questions."

Now, in Heaven's name, why should such conduct be permissible, by implication at least, in a police court although properly the subject of severe condemnation and treated as ground for reversal when occurring in a court of record? Is not such conduct in reality more harmful to society at large, as well as more indefensible in its injury to the individual concerned, if there is any distinction, in the police court where the ones least able to defend themselves, whether innocent or guilty, are on trial and appeal is comparatively rare?

But the entire police department and private detective and police court methods will go unchecked so long as the state does not provide a competent and experienced public defender, equal in every respect to the public prosecutor, and give such public defender all the necessary power to prevent and overcome such abuses that privately retained defenders can possibly exercise now in courts of record.

In the New Mexico case, the court notes the distinction between the extent of resistance which may be allowable in cases of arrest by officers and by persons who do not hold an official position, and says, "the law seeks to protect the officer in the discharge of his duty, and calls upon the citizen to exercise patience, if illegally arrested, because he knows he will be brought before a magistrate, and will, if improperly arrested, suffer only a temporary deprivation of his liberty."

But with our toleration of arrest by detectives of all kinds, and of keeping *incommunicado*, and rushing from one jail and keeper to another, this pretense of the law as to being brought before a magistrate and treated decently and fairly has become an actual stench in the nostrils of the patient citizen and makes the defective ones a greater menace to society. And there are judges who do not hesitate to even praise, not being content with excusing, such "police" executive if not court methods.

R. S. GRAY, of the San Francisco Bar.

## JUDICIAL DECISIONS

### TWO IMPORTANT DECISIONS IN KANSAS.

The Supreme Court of Kansas at its sitting in January, handed down a number of decisions which would be of interest to the readers of this Journal. The progressive tendency and common sense of the court is shown again, as usual, in the decisions on criminal appeals. For example, in *State v. Mattie Johnson*, where the journal entry showed that a defendant was sentenced under count six, instead of count one, the Supreme Court permitted a new journal entry *nunc pro tunc*, after the appeal had been filed in the Supreme Court, and then sustained the conviction below. The matter of paroles, too, has received interpretation in the cases of *in re Carroll*, and *in re Welsh*, petitioner. The bench was badly divided on these questions, which related to paroles by city judges, and the court, three concurring, one concurring specially, and three dissenting, held that the conditions of the parole could not extend beyond the term of the sentence, and hence where defendant was sentenced for six months, no punishment could be imposed upon him after the end of the six months' period, even though he were meantime on parole. I fear that until the legislature acts again, this has destroyed all real value in the parole law so far as relates to cities, as I fear the result will be that whatever respite from punishment a defendant can gain is clear gain to him, without any compensating or corresponding power on part of the court to punish further in case of disobedience. In other words, if a man is sentenced to jail for thirty days and paroled for a period which under the law may last two years, if he can induce the court now to parole him, all he needs to do is to behave tolerably well for thirty days, and after that time, he may snap his fingers at the court, knowing that it will be wholly incapable of recommitting him to jail, or giving him any further punishment after the thirty day limit has expired, whether he has been meantime in jail or not.

J. C. RUPPENTHAL, Judge 23rd Judicial District of Kansas.

### VARIANCE CAUSED BY USE OF "STRANGLING" IN INDICTMENT AND "SMOTHER" IN INSTRUCTION.

In *Law Notes* for February, 1914, we find the following interesting account of an unfortunately typical kind of judicial decision:

"A good illustration of the protection afforded a defendant on a trial for a crime is seen in the case of *Lanier v. State*, (Ga.) 80 S. E. 5. An indictment charged the defendants, husband and wife, with the murder of their infant by "choking, strangling, and by beating and striking." An instruction to the jury stated that if the defendants acted in concert with each other it would make no difference which "actually struck the blow, or choked, or smothered the child; each would be responsible, regardless of who may have struck the fatal blow." It was held by a majority of the court that there was a fatal variance between the indictment and the instruction, entitling the husband, who was convicted of the crime, to a new trial. The court said: "To smother is to stifle, to suffocate by stopping the exterior air passages to the lungs; to strangle is to suffocate by a pressure or constriction of the throat. The jury may have believed that under the evidence the child was smothered and not strangled. This instruction permitted them to find the defendant guilty of murder accomplished in a manner not charged in the indictment." The presiding justice and Judge Lumpkin, refusing to take so technical a view, dissented, saying: "We do not think that a new trial should be granted on account of the instruction contained in the fourth division of the opinion. The lexicons define both words

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to mean 'to stifle; to suffocate.' Death accomplished by strangling results from inability to inspire and expire air into and from the lungs, and death from smothering results from the same physiological cause. The charge in the indictment that death was produced by choking and by strangling indicates that strangling was not limited to suffocation produced by a constriction of the throat. While there may exist some technical difference in the terms, yet in common speech one is generally understood as the equivalent of the other. We do not think that the difference is so radical as to imply essentially different means of producing death."

The only comment which the opinion of the majority seems to call for is a reference to the language of Justice Gould in the early case of *Coggs v. Bernard* (1703) 2 Lord Raymond 909, where, in referring to a particularly vicious instance of judicial technicality, he said that it was "a thing no man living that is not a lawyer could think of."

I. MAURICE WORMSER, New York City.

### ACCOMPLICE.

*People v. Duffy*, 144 N. Y. Supp. 699. Where the defendant asked F., who had previously collected bribes for police protection, but had withdrawn or been withdrawn from that position, for a list of persons from whom he had collected, and told F. he was going to collect from them, F., who merely furnished him the list, was not an accomplice in the subsequent receiving by defendant of bribes from such persons.

Though the trial court erroneously ruled a witness was an accomplice, his testimony can on appeal be considered as that of one not an accomplice, and so not requiring corroboration.

### ATTEMPT TO INFLUENCE COURT.

*Curtis v. State*, Ala. App., 63 So. 745. By letters written to the court. In affirming a conviction of forgery, the Alabama Court of Appeals says that there is no merit in the exceptions reserved, the defendant was protected by the trial court in every legal right and was treated with due courtesy and consideration. "The evidence of his guilt is, in our opinion, overwhelming and yet he has enlisted in his behalf the sympathies of a number of philanthropic workers, who have visited the jail during his confinement, and who have, apparently at his instance, addressed to us numerous written appeals in the shape of letters, begging for leniency and a reversal of the case here for a new trial below, intimating, as expressed by some, that he had not had "a square deal" on the former trial, basing their assertion, so far as appears, on mere hearsay. These communications have no place in this court, and are highly improper; but, believing the motives prompting them to have been sincere, and that they were not designed by the authors in any evil purpose to improperly sway or influence this court from the discharge of its duties, but rather originated in a misconception as to what those duties were, we shall take no action against the parties in the matter, except to give this warning and express our disapproval in this way of such appeals, and this with a hope of saving the necessity of having to resort to other methods in the future to prevent a recurrence. The function of this court is solely to review the questions of law presented by the record, and a reversal or affirmance on an appeal is not a matter of discretion with us, but of law; hence, urging upon us, with a view to obtaining a reversal, any other consideration than the law is entirely out of place.

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### BIGAMY.

*Garner v. State*, Ala. App., 64 So. 183. *Marriage before age of consent.* Defendant was convicted of bigamy. The proof was that while under the age of consent, being between fourteen and fifteen years of age, he contracted a marriage, co-habited with his wife for a day or two, and left her. About five years later he married another woman, and was prosecuted for contracting this second marriage. The first marriage had not been annulled by judicial proceedings. The defendant offered evidence that when he left his first wife he told her he "was no longer her husband and that she was no longer his wife," and that he then and there severed the marriage relation and disaffirmed the marriage. The trial court excluded this evidence. Held that the first marriage was only voidable and "could not be annulled or disaffirmed by the mere *ipse dixit* of the defendant by renunciation or denial of it, or by his repudiation of the wife at his election for this or that cause," but could be annulled only by the state through a court having jurisdiction. Hence the evidence was properly excluded and the conviction was affirmed.

### BLOODHOUNDS.

*Carter v. State*, Miss. 64 So. 215. *They must be corroborated.* Defendant was convicted of burglary. The proof was that a store had been entered and some money stolen. Bloodhounds were put upon the trail of the thief, at least thirty-two hours after the burglary, and followed it to the defendant's house, and to the defendant in person. There was no other evidence to connect him with the crime. He bore a good reputation for honesty in the community. Held that while the fact that the bloodhounds when put upon the trail went to the defendant was admissible as evidence of guilt, alone and unsupported it was insufficient to sustain a conviction. "There must be other and human testimony to convict." The conviction was reversed.

### BURGLARY.

*People v. Walton*, 144 N. Y. Supp. 308. *Breaking and entering.* Pen. Law (Consol. Laws 1909, c. 40) Sec. 404, declares that a person who, with intent to commit a crime therein, breaks and enters a building, shall be guilty of burglary in the third degree, and section 400, subd. 2, provides that the word "break," as so used, means "opening, for the purpose of entering therein, by any means whatever, any outer door of a building." Held that, where a prosecutor, having loaded a wagon with merchandise, left it in a barn, closing the barn door, without locking it, and defendant opened the door and took goods from the wagon, he was guilty of breaking and entering sufficient to sustain a conviction of burglary in the third degree.

### CONSPIRACY.

*People v. Davis*, 144 N. Y. Supp. 284. *Preventing exercise of lawful trade.* Penal Law (Consol. Laws 1909, c. 40) Sec. 580, subd. 5, provides that conspiracy may consist of an agreement to prevent another from exercising a lawful trade by force of threats, or by interfering or threatening to interfere with property belonging to another, or with the use thereof. Section 583 declares that no agreement except to commit a felony on the person of another, or to commit arson or burglary, amounts to a conspiracy, unless some act beside the agreement be done to effect the object thereof. Held, that an indictment charging that at least three persons conspired to prevent L. from exercising the trade of a horseshoer by threatening his customers to cause strikes on work on which

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their horses were used unless they refrained and refused to have their horses shod by L., alleging the overt acts to consist in threats to the customers to cause such strikes, sufficiently charged a conspiracy to oppress L. in the exercise of his lawful calling.

### CONSTRUCTION OF STATUTES.

*Thomas v. State*, Ala. App., 64 So. 192. *Carrying concealed weapons*. The defendant was convicted of carrying concealed weapons. The proof was that he placed a pistol in his pocket, where it was concealed from view, and soon after was arrested and the pistol taken by the officer. The defendant did not take a step between the time when he put the pistol into his pocket and the time when it was removed by the officer, but had stood still. He contended that he had not "carried" the pistol as that word necessarily required locomotion. Held that the word "carried" in the statute meant "to have concealed about the person, or to bear concealed about the person" so that the concealed weapon was so connected with the person that locomotion of the body would carry with it the weapon as concealed. The conviction was affirmed.

*Holley v. State*, Ala. App., 63 So. 738. *Shooting across highway*. The defendant was convicted under a statute making it a misdemeanor to "discharge a gun or other firearm along or across any public road." The proof was that the defendant while sitting in the rear end of a wagon which was traveling along the center of a public road fired his gun to one side and consequently across only a part of the road. The appellate court thought that the legislature intended "that the greater (that is, the width of the whole road) should include the lesser (that is, part of the public road)," as the statute was designed to protect the lives and persons of those in or traveling on the public highways from accidental shooting, and sustained the conviction.

### DEMURRER.

*United States v. Kennerley*, 209 Fed. 119. *Question of obscenity not decided by court on demurrer*. In a prosecution under Cr. Code (Act March 4, 1909, c. 321, 35 Stat. 1129), Sec. 211, as amended by Act March 4, 1911, c. 241, Sec. 2, 36 Stat. 1339 (U. S. Comp. St. Supp. 1911, p. 1651), for sending an obscene book through the mails, whether or not the book is obscene must be determined by the jury under instructions, and the court on demurrer, even when the book is stipulated into the record as a part of the indictment, has power only to decide whether it is so clearly innocent that the jury should not pass on it at all. Rule in *Regina v. Hicklin*, L. R. 3 Q. B. 36, disapproved.

### ERROR.

*State v. Duff*, Mo., 161 S. W. 683. *Fair trial and proper record necessary*. The defendant was convicted of burglary on proof that he had been caught in the act. The prosecuting attorney cross-examined the defendant as to his having been arrested some seven or eight years before on a like charge and the state introduced the testimony of two deputy sheriffs that they had previously arrested the defendant. No objection was made by the defendant. The court held that the cross-examination and the above testimony were improper as prejudicing the defendant before the jury and denying him a fair and impartial trial, but as the attention of the trial court was not called to the matter by an objection that this did not constitute reversible error.

The indictment charged burglary in the first count and larceny in the second. The defendant was convicted of burglary but acquitted of larceny. The record

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stated that the defendant was "informed by the court that he stands charged with larceny, and pleads not guilty," and failing to show cause why judgment should not be pronounced against him was sentenced to the penitentiary. The appellate court held that the judgment was invalid, as shown by the record, because the defendant was sentenced for a crime of which he had been acquitted and because the record showed that he was sentenced not because he had been tried and found guilty, but because he had pleaded not guilty, and said that if there were no other error the case should be reversed and remanded for proper sentence.

The record of the inpanelling and swearing of the trial jury stated that "the jury being by the clerk sworn, and after the selection the following good and lawful men of the county were chosen to try this cause," giving their names. The appellate court held that this record was fatally defective. If the word sworn in the record related to the examination on their *voir dire*, the record does not show that they were sworn to try the cause, if the word means that they were sworn to try the cause, the record does not show that they were properly examined on their *voir dire*. For this error the case was reversed and remanded for new trial.

It will be noticed that the court had no way of knowing whether the jury had been properly impanelled and sworn or not. The defect may have been in the record rather than in the proceedings in the lower court. The record did not affirmatively show that the proceedings below were defective. It simply failed to allege that all necessary steps were taken. It would seem that the appellate court might properly have relied upon the presumption that the acts of the trial court were regular, in the absence of a showing to the contrary. But even if the court should not rely upon this presumption, it should not be necessary to reverse the verdict if the defect was simply in the record.

*Commonwealth v. Croson*, 243 Pa. 19. *Error in limiting cross-examination.* On the trial of an indictment for murder where the defendant admitted the killing but contended that the act was done in self-defense, and it appeared that defendant had been the host at a party at which deceased was present; that deceased had acted in an outrageous and violent manner, using vile language and assaulting other members of the party; that when deceased had gone outside the house, several shots were heard; that after being induced by defendant to leave the house he had come back and approached defendant, who was seated by the fire, threatening to kill him, whereupon defendant raised his shotgun and shot deceased dead, the court erred in limiting the cross-examination of the witnesses for the commonwealth to what took place at the particular instant when the shots were fired. It was the right of the defendant to have all the facts connected with the shooting fully and fairly disclosed by the prosecution, as well as by any witness which he might call in his behalf. Where in such case defendant offered evidence of good character the court erred in permitting the defendant to be cross-examined as to whether or not he had made statements years before to the effect that he had shot a woman; and in allowing the commonwealth to offer evidence in rebuttal of defendant's denial that he had made such a statement, without any offer to prove that he had actually done such a thing. The evidence was not competent as affecting his reputation for good character at the time of the commission of the homicide or for years preceding it. The charge to the jury in such case was inadequate where the jury were merely told that defendant, in his own house, had rights that would

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not attach to one outside with means of fleeing or escaping, but were given no adequate explanation of the rights of one who, without fault of his own, is assaulted in his own dwelling house by one who has no right to be there at the time, and a judgment upon a verdict of guilty of murder of the first degree was reversed.  
J. L.

### EVIDENCE.

*People v. Katz*, N. Y. 103 N. E. 305. *Admissibility of evidence of other crimes.* The larceny with which defendant was charged being committed by means of a conspiracy, requiring a large number of actors to carry out the involved plot, and it being quite possible that his connection with the scheme, confessed in certain phases, might, as claimed by him, have been without criminal knowledge or purpose on his part, evidence of his prior suggestion to another of a scheme essentially the same is admissible, on the question of guilty knowledge of intent, and this though such scheme was carried out; and likewise testimony that such other person then expressed to defendant his opinion that the proposed transaction was criminal, and also communicated to him the like opinion of another. Hiscock, Collin, and Hogan, JJ., dissenting.

*People v. Duncan*, Ill. 103 Ill. 1043. *Admissibility of evidence of attempted suicide.* In a criminal prosecution, evidence that after accused's arrest he attempted to commit suicide is admissible, as tending to prove guilt of crime charged.

### FALSE PRETENSES.

*People v. Warfield*, Ill. 103 Ill. 979. *Subject matter of the offense.* An instruction in a prosecution for conspiring to obtain money and property by false pretenses that whoever, with intent to cheat another, designedly, by any false pretense, obtains the signature of another to any written instrument or obtains from any person money, personal property, or other valuable things is guilty of obtaining money and property by false pretenses was erroneous as authorizing a conviction if the object of the conspiracy was to obtain prosecuting witness' signature to any written instrument or obtain any valuable thing from her by false pretenses, when the obtaining of her signature to a book order and to certain notes, as was done, would not be an offense.

### FOOD.

*People v. Frudenberg*, N. Y. 103 N. E. 166. *Construction and validity of ordinance regulating sale of milk.* New York City Sanitary Code, Sec. 183, declaring that it shall be the duty of all persons having in their possession receptacles containing milk to cleanse or cause them to be cleansed immediately upon the emptying, and that no person shall receive or have in his possession any such receptacle which has not been washed after holding milk or cream, is a valid police regulation, being for the benefit of the public health, the expression "immediately" meaning "forthwith," and implying prompt and vigorous action, but not being unreasonable, so as to prevent a dealer from retaking soiled receptacles used for the conveyance of milk. A driver of a milkwagon who collected unwashed receptacles, and, instead of taking them directly to a sterilizing plant, delivered them at a railroad station, where they were to be returned to his master, is guilty of a violation of New York City Sanitary Code, Sec. 183, requiring the immediate cleansing of receptacles containing milk, and providing that no person shall receive or have in his possession any unwashed receptacles. Willard, Bartlett and Miller, JJ., dissenting.

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### INDICTMENT AND INFORMATION.

*United States v. Breinholm*, 208 Fed. 492. *Sufficiency*. To make an indictment under Cr. Code (Act March 4, 1909, c. 321) Sec. 211, 35 Stat. 1129 (U. S. Comp. St. Supp. 1911, p. 1651), for mailing a nonmailable letter, giving information as to where and how and by whom and by what means certain acts and operations could and would be done and performed for procuring and producing an abortion, the letter set out need not be such that a stranger would know what information it gave, nor need the indictment contain explanatory matter to show that the letter did give such information.

*People v. Tail*, Ill. 103 N. E. 750. *Sufficiency*. An information for violating quarantine regulations, which alleged that the board of health having previously established certain rules for the prevention of the spread of scarlet fever, and "having directed" that accused, "his residence, and family be placed under quarantine, because a member of his household was infected with a dangerously communicable disease," in pursuance of said rules, and that accused did then and there unlawfully violate such rules by disregarding the quarantine, did not sufficiently show the existence of an emergency justifying the quarantine of accused, since the person in accused's household alleged to have the fever might not have been in his dwelling house at the time; "household" being equivalent to "family."

*People v. Gray*, Ill. 103 N. E. 552. *Waiver*. Though a defendant can, in a criminal case, by pleading to the indictment, waive all the irregularities in the constitution of the grand jury, he cannot waive failure to swear the grand jury, or any grand juror.

### INSANITY.

*Commonwealth v. Simanowicz*, Pa. 89 Atl. 562. *Preliminary inquest to determine sanity*. In the trial of a preliminary issue to determine the sanity of accused, error in instructing that the burden was on accused to establish insanity beyond a reasonable doubt was not cured by the withdrawal of the plea of not guilty, entered by direction of the court when the prisoner stood mute and by the entry on advice of counsel of a plea of guilty, the alleged insane person not being bound by such plea.

### JURORS.

*State v. Schlosser*, N. J. 89 Atl. 522. *Improper conduct as ground for review*. During cross-examination of one of the state's witnesses, a juror interrupted, asking what the inquiry had to do with the case, and stated that they were busy men and were compelled to listen "to a lot of stuff" that had nothing to do with the case. After the court had ruled that the examination was proper, the juror again interpolated: "It is a waste of time." Held, that such interruption though highly improper, was not prejudicial to accused, it appearing that the examination then being conducted had reference to matters not applicable to the merits of the case.

### MISNOMER.

*Hinktom v. State*, Ala. App., 64 So. 193. *Name of defendant*. An affidavit charging assault and battery, stated that the defendant's name was "George Hinktom, whose name is to affiant otherwise unknown." The warrant was issued against George Hinktom. At the trial, prosecuting witness testified that he knew defendant's name was "George Haughton" and not "George Hinktom" and that



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he knew this when he made the affidavit. This evidence was undisputed. The defendant was convicted, and appealed on the ground of variance between the name as stated in the accusation and as proved. Held that the party charged with crime has a substantial right to be so designated that there be proper record evidence of his identity. When his name is known he must be designated by it. If his name is alleged to be unknown and the proof shows that it was known, there is a fatal variance. Hence the conviction was reversed. In *Thomas v. State*, Ala. App., 64 So. 192, the court sustained an indictment against "Arthur Thomas" where the plea in abatement alleged that his true and correct name was "Buddie Thomas," but admitted that he was known and called by the name of "Arthur Thomas."

### NEUTRALITY.

*United States v. Steinfeld & Co.*, 209 Fed. 904. *What shipments forbidden.* Neutrality Resolution, March 14, 1912, prohibiting the violation of neutrality by shipment of munitions of war procured in the United States and exported to an American country in which conditions of domestic violence exist, does not prohibit the shipment of munitions of war from one point in the United States to another, but only from a point in the United States to a point in a foreign country; and hence an indictment merely alleging that defendants caused to be made a shipment of munitions of war from New Haven, Conn., to Tucson, Ariz., to be there trans-shipped to the state of Sonora, Mexico, as its ultimate destination, merely charged an intent to violate the law, and was therefore fatally defective.

### PARENT AND CHILD.

*Dunn v. State*, Ind. 103 N. E. 439. *Neglected child.* Burn's Ann. St. 1908, Sec. 1643, defines a "neglected child" as any boy under 16 years of age or girl under 17 years of age, who has not proper parental care, or is found living in a house of ill fame, or with any vicious or disreputable persons, or whose home, by reason of depravity of its parent, is an unfit place for the child. After accused's husband went to another town to work, she began to visit wine rooms until late at night, and brought a man home with her, on a number of occasions, and had sexual intercourse with him for hire until a late hour in a room near where her young children were, and on one occasion had intercourse with a man while another man had intercourse with her 17-year-old daughter in the same room, thus practically making her apartments a house of prostitution. Held, that accused's children were "neglected," within the statute, and she was liable thereunder contributing to their neglect by virtually requiring them to live in a disreputable house.

### REASONABLE DOUBT.

*Hooten v. State*, Ala. App. 64 So. 200. *Possibility of guilt.* On a trial for murder, the court gave the following charge: "If you believe from all the evidence, beyond a reasonable doubt, that the defendant is guilty, though you may also believe that it is possible that he is not guilty, you must convict him." Held that the charge stated a correct proposition of law. The conviction was affirmed.

### SENTENCE.

*O'Brien v. McLaughry, Warden*, 209 Neb. 816. *Discharge from sentence illegal only in part.* A prisoner confined in a federal penitentiary under a

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sentence imposing two terms on different counts of the indictment to be served successively, the second of which terms is illegal, is entitled to be discharged on habeas corpus from such part of the sentence, although his first term has not expired, because of the effect which the illegal part of the sentence has on his right to petition for parole after he has served one-third of the total of the term or terms for which he was sentenced," under Act June 25, 1910, c. 387, Sec. 1, 36 Stat. 819 (U. S. Comp. St. Supp. 1911, p. 1702).

### TRIAL.

*People v. Hotz*, Ill. 103 N. E. 1007. *Improper request for instructions.* It was an imposition on the trial court to ask him to pass upon 52 instructions, many of which covered the same ground as those given, dealt with the same subject, differing only in phraseology, and assumed that matters excluded by the court were in evidence.

*People v. Annis*, Ill. 103 N. E. 568. *Reference to refusal of accused to testify.* Cr. Code (Hurd's Rev. St. 1911, c. 38), Sec. 426, provides that if a defendant in a criminal case does not testify it shall not create a presumption against him, nor shall the court permit any reference to be made to such neglect. Held, where a defendant did not testify, a reference thereto by the state's attorney by stating in argument, "For some reason not known to me and not known to you, gentlemen, she did not testify and tell you anything about the case or say one word in her behalf," was prejudicial error and was not cured by the sustaining of objections to the remarks.

### WITNESSES.

*People v. Scott*, Ill. 103 N. E. 617. An officer in charge of the court, who remains in court, notwithstanding a rule excluding the witnesses, is properly permitted to testify.

## NOTES ON CURRENT AND RECENT EVENTS.

### ANTHROPOLOGY—PSYCHOLOGY—LEGAL-MEDICINE.

**Comments on the Case of Father Johannis Schmidt.**—The g attitude and appearance of Father Schmidt was striking. He is rather of stature, well nourished, and round of limb. He wore a full beard, and his somewhat pale and prominent features and rather finely chiseled nose and eyes that were liquid and spiritual in expression, he gave the instant impression of a certain resemblance to the Christ with which one becomes so familiar among the mentally diseased. He moved about and sat down without apparently paying any attention whatever to his body. Throughout the examination sat perfectly quiet, there was no agitation of his body or signs of nervousness of any kind; his hands lay limp in his lap, his shirt was unbuttoned at the neck, his trousers were unbuttoned in front, and he gave me the general impression of not only not caring for his body, but as hardly knowing that he had one. Upon his left side, under the breast, there is a large birth-mark the size of my two hands spread out. It is pale pink in color, neither red nor white, the significance of which will appear later. At the extremity of the spinal column there is a triangular area or hairiness of perhaps four inches in length with the base of the triangle uppermost.

The mental examination elicited the following facts: He has always been interested in blood. He says that blood always excites him, meaning sexually. He remembers in the old homestead he was always very much interested in seeing his mother chop off the heads of the chickens and geese, and he often pick up one of the heads and carry it about with him for days afterwards. On occasions, he, with another boy, would take the heads and place them between their legs. On one occasion he was about to unbutton his pants and put the head against his genitals when his father caught him and whipped him. He used to visit the slaughter house with another boy and while waiting for the operations they would feel each other's genitals. One of his very interesting experiences in seeing blood was in seeing the blood in the bed where his mother had slept,—undoubtedly her menstrual blood. Upon one occasion, when his mother was confined and he was about six years old, he says he wanted to go with her very much when she was in bed, and once when in the night she pulled back the bed clothes and saw some blood. Upon another occasion she asked him to take the vessel out and empty it. She had put a piece of cloth over it. He took it out and emptied it in the sink. It contained blood. He remembers falling upon a broken bottle and cutting his thigh and being taken to the barber, who put some stitches in it, and his sister would generally be present and assist the dressings. He says he is the favorite priest of the country. God has shown him many times the real blood in the chalice.

He was ordained in the old country by a bishop, but the night previous to his ordination he was visited by Saint Elizabeth, who ordained him and made him her favorite priest. This was Saint Elizabeth of Hungary. He knows all the stories of this saint; he tells about how she was a very good woman who used to go about among the poor and help them. He remembers the story of her affianced husband met her on a cold, wintry day and wanted to

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where she was going and chided her for exposing herself to the weather. He asked her what she had in her apron, and reaching forward pulled it open, when the bread that was there turned into roses, and the roses all fresh fell out upon the ground. He tells how this man afterwards married her, drove her out of the house, and how finally she died in prison. He also knows the story of Saint Elizabeth picking up the little leprous child, taking it home, putting it in her bed, and then looking and finding that it was the Christ child.

He tells about his own life. He tells how his father used to abuse his mother. His father was an engineer on the railroad and came home frequently drunk. He says his mother was a very good woman and used to help the poor when she could. He says his sister was also a very good woman, and she also used to help the poor when she could. His sister's name was Elizabeth.

Here he said also that there was something mysterious about his own parentage, that he frequently asked his mother about it and that she said that she would tell it all in good time. The father, I think he said, also knew about it. The father wanted his name called Heinrich when he was born, but it was finally Johannis, and that has great significance with reference to this parentage; he says he is named after John the Baptist, and this relationship between himself and John the Baptist, through his mother, has something to do with the relationship of Christ to Mary also perhaps in the same way. John the Baptist was the man who baptized Christ. He took Christ into the water and baptized him. Water is a means of purification, and always in the communion service they mix water with the wine and when Christ was on the cross and the soldier plunged the spear in his side blood and water flowed from his side, and the birth-mark on his side is neither red nor white, but pale — like blood mixed with water.

In the old homestead in Darmstadt there were only three rooms, kitchen, the bed room for his father and mother, and the other room where the children slept. He slept often in the bed with his sister, and his brother Heinrich was also often in the same bed. He remembers very early having had some kind of sexual relation with his sister, and he remembers that his sister told him that he must not say anything about it. He thinks also that Heinrich had the same sort of relations with her. He says also that Heinrich is the brother most like himself.

The father used to misuse the mother very much, often striking her. Upon one occasion he threw the hatchet at her, and upon another occasion, at the table, when she was getting supper ready, he struck her with a knife and cut her hand. He remembers the knife very well, because it is one his father carried for many years. When he saw the blood in the bed at the time his mother was confined he thought the blood was the result of his father having wounded his mother with the knife. On one occasion, when he, and his brother Heinrich, were sleeping together, his brother woke him up and called his attention to noises coming from his parents' room. He heard his mother give a suppressed cry, and while it was not the same kind of cry she made when his father cut her with the knife, still he thought that his father was injuring her.

He has had numerous sexual relationships during his life. In his early days he and a boy named Otto Schmidt, who was a cousin of his, used to beat each other with a rope. Later on there was another boy with whom he had homo-sexual relations, a boy who came to visit him when he had rheumatism,

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and finally with Dr. Murat. In his relations with Dr. Murat he has felt himself become a woman; he put his hands to his breasts, and said that he had the breasts of Saint Elizabeth. In these relations he was often rough, and his companion would complain. He actually bit, and he said that he felt as if he could eat them.

When he first met Annie Aumuller he fainted,—became completely unconscious. He can give no explanation for this. Later, after he had sexual relations with her for some time, he was doubtful whether it was right or not. He knew that he was offending the laws of the priesthood, and yet he felt that God had given him those feelings and those faculties, and that it might be right to use them. He accordingly took her into the church, had sexual relations with her at the altar, meanwhile watching the chalice to see whether God would give him the sign. He said there was no sign and he therefore thought that God approved.

I asked him, if when he came to the Tombs he had not had a cut on his hand. He said, yes, on the right hand at the base of his index finger. I asked him how he got it and he said that it came from the knife when he (I believe he used the term) "divided" Annie. There was some considerable discussion as to how many parts he had cut her in, and it was not altogether clear whether it was seven or nine parts. He insisted that it was seven, and no matter what was said with regard to the coroner's report or any other sort of information, he replied stolidly, "I know better than they, it was seven."<sup>1</sup> He finally, upon request, took a pencil and paper and indicated by a drawing how he had cut up the body. After he cut her throat he attempted coitus with the body, but failed. He took some of the blood from the wound in the throat, mixed it with water, and drank it.

The Lord had said to him before the homicide upon several occasions that Annie must be a sacrifice and an atonement. One of the objects of putting her in the water was to mix her blood with water and put her where no one else could even touch her. He told once about visiting a church in the old country, where there had been a miracle and where the Lord had caused to appear upon the altar twelve bleeding heads. He saw the cloth upon which these heads had rested, and these heads were the heads of the twelve apostles. In connection with the number 7 as being the number in which Annie's body was divided, he speaks of the seven candle sticks, the seven branches of the candle sticks used in the Jewish Temple, etc.

I asked him when I had completed my examination whether he was at peace with God and he said that he was, that God would keep his promise, and he stated that he felt as if he had entered into God and formed a part of him, was united and identified with him.

All of the above facts, so far as they were objective, were verified by the father and sister, who came from Germany to testify at the first trial, and also by a close associate of Father Schmidt's in the priesthood. A careful going over of the family record showed mental disease upon both sides of the family. His heritage of mental disease was therefore duplex. For three or four, I am not sure but five, generations back there were numerous instances of mental disease, particularly suicide.

This history shows clearly what we would call today a *breaking through*

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<sup>1</sup>The mystical and religious significance of seven is well known.

## CASE OF FATHER SCHMIDT

of the *unconscious*. Undoubtedly from his early boyhood Father Schmidt has had a serious internal conflict that expressed itself in sexual symbols. He has been fighting this conflict all his life; I think as early as seven years of age he was known as "the little chaplain," having erected an altar in his house and made vestments for himself and worshipped before the altar. This conflict was most severe, and robbed him of anything like consistent efficiency. He was always in trouble wherever he was, he had two or three distinct fugues, and was rarely able to get along at any church for any period of time. He was always being censured by his superiors until they found that did little good, because instead of correcting his ways he would fall into a depression and not eat. There is plenty of evidence, as I recall it, that he frequently made mistakes in raising the host at mass with the thumb and middle finger instead of the thumb and forefinger. This might seem a trivial mistake to one not acquainted with the rubric of the mass, but when one realizes that the thumb and the forefinger are especially consecrated by the bishop at ordination and anointed with holy oil, and thus prepared for their holy office of touching the host, it can be understood that to use the middle finger is not a trifling matter, but absolutely wrong. He, used his middle finger, he explains, because that was the sign of Saint Elizabeth.

It appears from the above examination that he identifies himself with John the Baptist. There are also evidences, especially in his appearance and the birth-mark on his side, that he identifies himself with Christ. The connection between Jesus, the child of Mary, and John, the child of her cousin Elizabeth, both conceived by the Holy Ghost, is well shown in the first chapter of Luke from the 28th to the 43rd verses. A further identification with Saint Elizabeth and therefore a change of sex was also noted in his relations with Murat. Another important element in the case is that he was just at the age of Christ and had he been convicted and executed as he appeared to expect he would be he would have been executed at exactly the same age and practically about the same time in his life that Christ was crucified. This confusion of identities is the commonest kind of thing to be met with in the psychology of the unconscious. A similar type of reasoning is shown with reference to a certain alleged abortifacient which he is said to have used. He gave Miss Aumuller some lentils, either to keep her from being pregnant, or to cause her menses to come. The prosecution claimed that he put these lentils up in packages and sold them for criminal purposes. The whole explanation of the thing shows a typical way of unconscious reasoning. He had noticed when he ate lentils that they made his bowels move.<sup>2</sup> That is the first point. The second point is that Esau sold his birthright for a mess of pottage. Now pottage, so Father Schmidt says, is the same thing as lentils. Therefore, putting all these things together, it can easily be seen why lentils should prevent conception, or at least bring about a miscarriage.

Another difficulty which Father Schmidt had in the various churches was in his mixing water in the wine at communion. The rubric prescribes, I believe, that only a small portion of water shall be mixed with the wine, never more than one-third, whereas Father Schmidt was constantly being brought to task for using too much water. The bearing upon this of what has gone before is easily seen.

<sup>2</sup>Birth Phantasy.

## CRIMINAL PROCEDURE IN RELATION TO INDICTMENTS

So far as I was able to learn, Father Schmidt was a man of gentle nature, who gave not only freely to the needy, but to the extent of practically impoverishing himself.

The defense maintained that this man was suffering from mental disease, that he had finally been unable to handle the conflict that had been going on within him all his life, that the unconscious broke through and resulted in the homicide, that the meaning of the homicide can only be read in the light of this man's whole life. They maintained also that in his whole career he had shown himself to be inefficient, unable to adequately adapt himself to circumstances, in other words that he had always been a failure, just about able to get along. He had been once before confined in an institution for the insane in Germany, where he had been pronounced unqualifiedly insane. His whole life shows the varying dominion of the two sides of his nature, his varying successes and failures in the conflict.

The prosecution claimed that the whole thing was malingering, that he was a man of education and unusual attainments, very clever and capable, and that the whole delusional system, which has been outlined above, was manufactured. This, despite the fact that while he took great pains to deposit the various parts of his victim's body in the river, he left absolutely incriminating evidence right exactly where it could not fail to be discovered, left the blood-stained knife and saw in his trunk, his picture in a coat hanging up on the wall, and other things which were entirely at variance with a cleverly planned homicide. There were many other similarly stupid things, not only in connection with the act itself, but throughout his life, as particularly when he entered into an arrangement with Dr. Murat to do counterfeiting and expected to be able to prepare himself by buying a book or two on engraving.

The very horror and atrociousness of the thing that he did would seem to preclude the possibility of calm judgment being accorded him. It would seem that without question the more atrocious a crime the greater presumption there must necessarily be of the abnormality of the man committing it. The very character of the thing that he did would seem to be almost sufficient to warrant a diagnosis of mental disease.

WILLIAM A. WHITE, Supt. Government Hospital for the Insane,  
Washington, D. C.

## COURTS—LAWS.

**To Amend the Code of Criminal Procedure in Relation to Indictments, and to Repeal Certain Sections Thereof.**—The following bills have been recently introduced in the N. Y. Legislature. [Ed.]

The People of the State of New York, Represented in Senate and Assembly, Do Enact as follows:

SECTION 1. Section two hundred and seventy-five of the Code of Criminal Procedure is hereby amended to read as follows:

Section 275. Indictment, what to contain.

[The indictment must contain:

1. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties;

2. A plain and concise statement of the act constituting the crime, without unnecessary repetition].

1. *No indictment shall be insufficient if it contain the title of the action, specifying the court to which the indictment is presented, the names*

## CODE OF CRIMINAL PROCEDURE IN RELATION TO INDICTMENTS

*of the parties, and in substance a statement that the defendant at a specified time and place has committed some indictable offense therein, specified, which statement may be in popular language, without any technical averments or any allegations of matter not essential to be proved. Such statement may be in the words of the enactment describing the offense or declaring the matter charged to be an indictable offense or in any words sufficient to give the defendant notice of the offense with which he is charged.*

2. An indictment or count may refer to any section or sub-section of any statute creating the offense charged therein, and in determining the sufficiency of such indictment or count the court shall have regard to such reference.

3. Every indictment shall be signed by the district attorney or by the attorney general or assistant or deputy attorney general, whichever shall present the case to the grand jury.

SECTION 2. Section two hundred and seventy-six of the Code of Criminal Procedure is hereby repealed.

SECTION 3. Subdivision 6 of section two hundred and eighty-four of the Code of Criminal Procedure is hereby amended to read as follows:

6. That the act or omission, charged as the crime is [plainly and concisely] set forth [;] *sufficiently to give the defendant notice of the offense with which he is charged;*

SECTION 4. Section two hundred and ninety-one of the Code of Criminal Procedure is hereby amended to read as follows:

Section 291. Pleading in indictment for perjury or subornation of perjury. [In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court, or before whom, the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person where or before whom the perjury was committed]. *No indictment or count charging perjury or subornation of perjury shall be deemed insufficient on the ground that it does not state the nature of the authority of the tribunal before which the oath or affidavit was taken or made, or the subject of the controversy, matter or inquiry, or the words used, or the evidence fabricated, or on the ground that it does not expressly negative the truth of the words used.*

SECTION 5. This act shall take effect September 1, 1914.

EDWARD SWANN, Judge, Court of General Sessions, N. Y. City.

### To Amend the Code of Criminal Procedure in Relation to Indictments.—

The People of the State of New York, Represented in Senate and Assembly, Do Enact as follows:

SECTION 1. Section three hundred and ninety-one of the Code of Criminal Procedure is hereby amended to read as follows:

Section 278. [Indictment must charge but one crime and in one form.] *Charges which may be joined in one indictment.* [The indictment must charge but one crime and in one form except as in the next section provided.] *When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated.*



## CODE OF CRIMINAL PROCEDURE IN RELATION TO DEFENDANT

SECTION 2. The heading or title of section two hundred and seventy-nine of the Code of Criminal Procedure is hereby amended to read as follows:

Section 279. [Except where it may be] *Where the crime may have been committed by different means.*

SECTION 3. Subdivision three of section three hundred and twenty-three of the Code of Criminal Procedure is hereby amended to read as follows:

3. That [more than one crime is charged in the indictment within the meaning of Section 278 or 279]; *there is a joinder of charges or counts other than as permitted by Section 278 or Section 279; or*

SECTION 4. This act shall take effect September 1, 1914.

EDWARD SWANN.

**To Amend the Code of Criminal Procedure in Relation to the Trial of Defendants Jointly Indicted.**—The People of the State of New York, Represented in Senate and Assembly, Do Enact as follows:

SECTION 1. Section three hundred and ninety-one of the Code of Criminal Procedure is hereby amended to read as follows:

Section 391. *Joint or separate trials of defendants jointly indicted.* When two or more defendants are jointly indicted [for a felony, any defendant requiring it, must be tried separately. In other cases, defendants jointly indicted] *they may be tried separately or jointly, in the discretion of court.*

SECTION 2. This act shall take effect immediately.

EDWARD SWANN.

**To Amend the Code of Criminal Procedure in Relation to Evidence of Other Acts of Defendants.**—The People of the State of New York, Represented in Senate and Assembly, Do Enact as Follows:

SECTION 1. Section three hundred and ninety-one of the Code of Criminal Procedure is hereby amended to read as follows:

Section 392. Rules of evidence, evidence of certain children how received; *evidence of other acts of defendants.*

The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this code. Whenever in any criminal proceedings a child actually or apparently under the age of twelve years offered as a witness does not in the opinion of the court or magistrate, understand the nature of an oath, the evidence of such child may be received though not given under oath if, in the opinion of the court or magistrate, such child is possessed of sufficient intelligence to justify the reception of the evidence. But no person shall be held or convicted of an offense upon such testimony unsupported by other evidence.

*In any criminal case where the act with which the defendant is charged is one of a series of acts committed in pursuance of a general scheme, plan or system, any like acts of the defendant which were committed in pursuance of such general scheme, plan or system, may be proved, whether they are contemporaneous with or prior or subsequent thereto.*

SECTION 2. This act shall take effect September 1, 1914.

EDWARD SWANN.

**To Amend the Code of Criminal Procedure in Relation to the Defendant as a Witness.**—The People of the State of New York, Represented in Senate and Assembly, Do Enact as Follows:

SECTION 1. Section three hundred and ninety-three of the Code of Criminal Procedure is hereby amended to read as follows:

Section 393. Defendant as witness.

The defendant in all cases may testify as a witness in his own behalf

## ADVISORY BOARD OF PAROLE

[but his neglect or refusal to testify does not create any presumption against him].

SECTION 2. This act shall take effect September 1, 1914.

EDWARD SWANN.

**Advisory Board of Parole.**—The following bill was introduced in the Maryland Senate on February 18, 1914:

An Act to create an unpaid advisory Board to be known as the "Advisory Board of Parole," and to prescribe their powers and duties and to provide for the appointment, salaries and duties of a Secretary to said Board and Parole Officers, and to make an appropriation for the expenses thereof, and to repeal and re-enact with amendments Sections 6 and 7 of Article 41 of the Code of Public General Laws, and to add eight new sections to said Article 41, to follow immediately after Section 7 thereof, and to be known respectively as Sections 7A, 7B, 7C, 7D, 7E, 7F, 7G, and 7H, the same being an Act to render more effective and efficient the exercise by the Governor of his power to pardon and reprieve.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That Sections 6 and 7 of Article 41 of the Code of Public General Laws of Maryland be and the same are hereby repealed and re-enacted with amendments so as to read respectively as follows:

Section 6. The Governor, by and with the advice and consent of the Senate, shall appoint an advisory Board to be known as The Advisory Board of Parole, to consist of three members, who shall be appointed without regard to political affiliation and who shall each be not less than thirty years of age, and who shall each have been, for the four years next preceding his appointment, a resident and qualified voter of the State of Maryland. And the first appointments hereunder shall be made by the Governor as aforesaid, upon the passage of this Act, and if such appointments, or any of them, for any reason fail of confirmation at the January Session of the General Assembly of 1914, then the Governor shall appoint, as recess appointments, such number of members of said Board as may be necessary to secure a full board. One of said Board shall hold office for two years from the beginning of the term of his office and until his successor shall qualify; and one of said Board shall hold office for four years from the beginning of his term of office and until his successor shall qualify; and one of said Board shall hold office for six years from the beginning of his term of office and until his successor shall qualify. The term of all officers of said Board shall begin on the first day of May, 1914. The Governor, at the time of making and announcing the appointment of said three members of said Advisory Board of Parole, as well as in the commission issued by him to each of them, shall designate which of said Board shall serve for the term of two years, and which shall serve for the term of four years and which shall serve for the term of six years, and also which shall be chairman of said Board. On the expiration of each of said terms, the term of office of each member of said Advisory Board shall be six years from the time of his appointment and qualification and until his successor shall qualify.

Vacancies in said Board shall be filled by the Governor for the unexpired term, by and with the advice and consent of the Senate.

In the event that the term of office above described and prescribed for each of said members of said Advisory Board shall, in respect to any of said members, be held and decided by the Court of Appeals of Maryland to be in excess of the period or term of office allowed or permitted by the Constitution of Maryland, then, and in such event, the term of office of each of said members shall be, and this Act hereby declares and determines that the term of office of each of them shall be for the period of two years from and after the first Monday of May, 1914, and until their successors

## ADVISORY BOARD OF PAROLE

respectively qualify according to law, and in such event, the term of office of each succeeding member of said Board shall be for two years and until his successor qualifies.

The Governor may remove any member of said Board for inefficiency, neglect of duty, or misconduct in office, giving to him a copy of the charges preferred against him, and the opportunity of being publicly heard in person or by counsel in his own defense, on not less than ten days' notice. If such member shall be removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and his finding thereon, together with a complete record of the proceedings.

Section 7. Before entering upon the duties of his office each member of said Board shall take an oath that he will well and faithfully execute and perform the duties appertaining to his office according to the laws of the state and the rules and regulations adopted in accordance therewith.

SECTION 2. *And be it further enacted,* That eight new sections be and the same are hereby added to Article 41 of the Code of Public General Laws of Maryland, to follow immediately after Section 7 of said Article and to be known respectively as Sections 7A, 7B, 7C, 7D, 7E, 7F, 7G, and 7H, and to read as follows:

Section 7A. The said Advisory Board of Parole shall have and are hereby given visitatorial powers over all institutions to which any person may be committed upon a criminal charge or to which a minor may be committed as a delinquent, whether such institution be a State, County or City institution, or private institution receiving State, County or City aid; and the said Board shall have power to summon witnesses before it and to administer oaths or affirmations to such witnesses whenever, in the judgment of the said Board, it may be necessary for the effectual discharge of their duties under this Act; and any person failing to appear before said Board at the time and place specified, in answer to said summons, or refusing to testify, shall be punishable by a fine of not less than twenty-five dollars; false swearing on the part of any witness testifying before said Board shall be deemed perjury and shall be punished as such.

The said Advisory Board of Parole shall have power to make all needful rule and regulations not inconsistent with law for the effectual carrying out the provisions of this Act and to prescribe the powers and duties of all persons employed or appointed by said Board.

Section 7B. The said Advisory Board of Parole shall have power to appoint, and remove at pleasure, not more than four parole officers for the purpose of carrying out the provisions of this Act, each of whom shall receive compensation, to be fixed by said Advisory Board of Parole, not exceeding twelve hundred dollars per annum, to be paid from the moneys appropriated under the authority of this Act. The Advisory Board of Parole shall also, in its discretion, appoint and remove at pleasure other persons to serve as parole officers without pay. And the said Advisory Board of Parole shall have power to appoint and remove at pleasure a secretary, at a salary not to exceed fifteen hundred dollars per annum.

Section 7C. The Governor upon giving the notice required by the Constitution may commute or change any sentence of death into confinement in the Penitentiary or in the Maryland House of Correction or Maryland House of Correction, Woman's Branch, or banishment, for such period as he shall think expedient; and on giving such notice, he may commute or change the sentence of any person from imprisonment in the Maryland Penitentiary, to imprisonment for a like or for a less period in the Maryland House of Correction or in the Maryland House of Correction, Woman's Branch. And on giving such notice he may pardon any person, convicted of crime, on such conditions as he may prescribe, or he may upon like notice remit any part of the time for which any person may be sentenced to imprisonment, on such like conditions without such remission operating as a full pardon to any such person.

## ADVISORY BOARD OF PAROLE

Section 7D. In any case in which the Governor may issue a conditional pardon to any person, the Governor, in the absence of any provision to the contrary expressed therein, shall be the sole judge of whether or not the conditions of said pardon have been breached, and the determination by the Governor, that the conditions of such pardon have been violated by the person receiving the same, shall be final and not subject to review by any Court of this State.

Section 7E. *And be it further enacted*, That in any case in which the Governor may release any person by a conditional pardon and thereafter, on breach of any condition therein, revoke said conditional pardon, the person so released on such conditional pardon shall be required, unless otherwise ordered by the Governor, to serve the unserved portion of the sentence originally imposed upon him; and said person, unless otherwise ordered by the Governor, shall not be considered as serving any portion of his original sentence during the time he is released by virtue of such conditional pardon.

Section 7F. It shall be the duty of said Board to collect all information that may aid it in determining the advisability of recommending to the Governor the conditional pardon of any person sentenced under the laws of Maryland, and whenever said Board shall, upon examination, be of the opinion that both the interests of the State and the interests of any prisoner sentenced under the laws of Maryland would be best subserved by a conditional pardon, it shall be the duty of said Board to lay before the Governor for his consideration those facts and circumstances which induced their conclusion in that respect.

Section 7G. Whenever the Governor shall conditionally pardon any person sentenced under the laws of Maryland and shall prescribe as one of the conditions of such pardon that said person shall continue under the supervision of the Advisory Board of Parole during the term of such conditional pardon, it shall be the duty of said Advisory Board of Parole to supervise during said term the life and conduct of the person so conditionally pardoned and to ascertain and report to the Governor whether or not the conditions of said pardon are being faithfully complied with by said person. And whenever the Circuit Court of any county or the Criminal Court of Baltimore shall suspend the sentence of, or parole, any person convicted of crime, and shall direct such person to continue, for a time certain or until otherwise ordered, under the supervision of the Advisory Board of Parole, it shall be the duty of said Advisory Board of Parole to supervise, as directed by said Court, the life and conduct of such person, and to ascertain and report to said Court whether or not the conditions of such parole or suspension of sentence are being faithfully complied with by said person.

Section 7H. The sum of ten thousand (\$10,000.00) dollars annually is hereby appropriated to pay the salaries of the Secretary and the parole officers, herein provided for, and for the purchase of all needful books and records and for the necessary traveling and other expenses of said Advisory Board and of said parole officers, and shall be payable on the order or orders of said Advisory Board of Parole, in such amounts and at such intervals as said Board shall direct, and the Comptroller shall draw his warrant upon the Treasurer of Maryland for such amounts and at such intervals as directed by the said Advisory Board of Parole as aforesaid.

SECTION 3. *And be it further enacted*, That all acts and parts of acts inconsistent herewith are hereby repealed.

SECTION 4. *And be it further enacted*, That this Act shall take effect from date of its passage.

E. O. DUNNE, Baltimore.

## ALLOWANCES TO PRISONERS

**To Provide Counsel for Indigent Defendants Charged with Felony.**—The following are bills introduced in the Massachusetts legislature. They and others are commented upon elsewhere in this issue in the article by Mr. Baker, reprinted from the *Boston Transcript*. (House bill 1067.)

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. The superior court, at the beginning of a criminal term in any district, or at any time during such term, may appoint a person to act as counsel for indigent defendants charged with felonies, other than capital offenses, and may at any time revoke such appointment.

SECTION 2. Such appointment in the Suffolk district may be for any period not exceeding one year, at the discretion of the court. In other districts such appointment shall be for a single term of the court.

SECTION 3. The compensation to be allowed to counsel so appointed shall be fixed by the court, but the amount paid for his services shall not exceed one-half of the salary of the district attorney for the same length of time. The court shall allow the reasonable expenses incurred and paid by counsel so appointed.

SECTION 4. If a person so charged appears for arraignment without counsel, the court shall ascertain whether or not he desires counsel, and if so, whether or not he is able to obtain it. If satisfied that he is not able to do so, the court may assign him, as counsel, the person appointed as hereinbefore provided.

SECTION 5. A person so charged, upon his request in writing, shall have a list of the jurors who have been returned, and in the discretion of the court may have process to summon witnesses who are necessary to his defence. All expenses incurred under this act in any case shall be paid by the county in which such case originated.

SECTION 6. This act shall take effect upon its passage.

R. H. G.

**To Authorize Certain Allowances to Prisoners.**—(Mass. House, 1080.)  
*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. From and after the first day of July of the current year each prisoner in the state prison, the Massachusetts reformatory, the reformatory for women and the prison camp may receive from the treasury of the commonwealth a sum of money not exceeding three dollars per month.

The prison commissioners from time to time shall make rules, consistent with the provisions of this act, governing the amount of said allowance and the conditions upon which a prisoner may receive it. The money shall be paid quarterly to the warden or superintendent on a schedule approved by said commissioners, and shall be held by him in trust for said prisoners. He shall keep an account of all moneys so received separate from all other accounts, and shall disburse the same as hereinafter provided. He may pay to any prisoner discharged between two quarterly payments any money due him under the provisions of this act, taking his receipt therefor, and the money so paid shall be refunded on a schedule approved by said commissioners.

SECTION 2. The warden or superintendent shall retain, from the money received by him under the provisions of the preceding section, such portion

## DISPOSITION OF CRIMINAL ACTIONS

thereof as the prison commissioners by rules shall fix, to be disposed of as follows: On the release of the prisoner the money so retained, and money received by him under the provision of section three, and held by him at the time of the prisoner's release, shall be used by him, in his discretion, either for the purchase of clothing or other articles for the prisoner, or by paying the same, or any part thereof, either to him, or to the agent for discharged prisoners, to be expended by him for the benefit of the prisoner.

SECTION 3. The remainder of the money, if any, received by the warden or superintendent as aforesaid shall be disposed of as follows: At his request, the same, or any part thereof, may be deposited by the warden or superintendent, in trust for the prisoner, in a bank designated by him; or may be paid to his dependents, or be expended by the warden or superintendent for *articles* for his use. The prison commissioners, from time to time, shall designate by rule the articles which may be purchased for the use of prisoners, and no expenditures shall be made of money received as aforesaid for articles not permitted under said rule, except by vote of said commissioners, upon the recommendation of the warden or superintendent.

Any money received by the warden or superintendent, and not disposed of as hereinbefore provided prior to, or at the time of, the prisoner's release, may be retained until the expiration of the full term of the prisoner's sentence. At any time during that period the whole or any part of the same may be paid to the prisoner or expended for his benefit, and it shall be so paid at the time of such expiration.

Money in the hands of the warden or superintendent shall, at all times, be subject to forfeiture, under such rules as the prison commissioners from time to time shall make. Money so forfeited and money held for a prisoner who escapes from prison or for one who dies in the prison or on parole shall be disposed as directed by the commissioners, by rule or otherwise.

SECTION 4. If the prison commissioners shall at any time provide for grading the prisoners held in the state prison, the payment authorized by section one of this act shall be paid, thereafter, only to persons in the two highest grades, and the amount to be so paid may be increased to four dollars per month.

R. H. G.

**Relative to the Punishment for Murder in the Second Degree.**—(Mass. House, 1065. Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section two of chapter two hundred and seven of the Revised Laws is hereby amended by adding at the end thereof these words:—or for any term of years not less than twenty,—so as to read as follows:—*Section 2.* Whoever is guilty of murder in the first degree shall suffer the punishment of death, and whoever is guilty of murder in the second degree shall be punished by imprisonment in the state prison for life, or for any term of years not less than twenty.

R. H. G.

**To Provide for the Disposition of Criminal Actions on Information of the District Attorney.**—(Mass. House, 1069.) Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. On the written petition of any person charged with felony,

## SENTENCES FOR FELONY

the maximum punishment for which shall not exceed        years' imprisonment in the state prison, and who is held in custody therefor, setting out that he is held as aforesaid, and that he is guilty of the offence so charged, and that he desires to plead guilty thereto, and to have judgment forthwith passed upon him therefor, and requesting the court to direct the district attorney to file an information against him charging him with the commission of such offence, the court, or any judge thereof, may direct that such information be filed by the district attorney, and upon the same being done, such person shall, without unnecessary delay, be brought before the court, as upon indictment by a grand jury, and after the court shall have heard the plea of guilty on the part of such person, to the charge contained in the information, and his statement of the facts indicating his guilt, and whatever such person may submit relevant to the proper disposition of the case, the court shall pass judgment, and make disposition of the case in all respects as though the accused person had been duly adjudged guilty upon an indictment regularly returned by the grand jury.

SECTION 2. All courts having jurisdiction to try and determine and make disposition of criminal actions, involving charges of felony, are fully authorized and empowered to proceed in the manner hereinbefore mentioned.

SECTION 3. This act shall take effect upon its passage.

R. H. G.

**Relative to Aiding Discharged Prisoners.**—(Mass. House, 11078.) Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. The agent employed to aid prisoners discharged from the state prison may, with the approval of the prison commissioners, assist during office hours, such other discharged prisoners, found to be needy and deserving, as can be helped without expense to the commonwealth.

SECTION 2. So much of chapter eight hundred and twenty-nine of the acts of the year 1913 as is inconsistent with this act is hereby repealed.

R. H. G.

**Relative to Sentences for Felony.**—(Mass. House, 1066.) Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. If a convict is sentenced to the state prison, for a crime committed after the passage of this act, except for life or as an habitual criminal, the court shall not fix the term of imprisonment, but shall merely impose a sentence to the state prison. Whoever is so sentenced to the state prison may be held therein for the longest term fixed by law for the punishment of the offence of which he has been convicted.

If a convict is sentenced to the house of correction for a felony, excepting for a term of two years or less, the court shall not fix the term of imprisonment, but shall merely impose a sentence to the house of correction. Whoever is sentenced to the house of correction for an unfixed term, as aforesaid, may be held therein for the longest term of imprisonment in a house of correction fixed by law for the punishment of the offence of which he has been convicted.

If a convict is sentenced to the state prison or is sentenced to a house of correction for an unfixed term, as aforesaid, for two or more felonies, he may be held for a term equal to the aggregate of the maximum terms fixed by law

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for the punishment of said felonies, and for the purposes of this act, he shall be held to be serving one continuous term, equal to such aggregate.

A sentence imposed under this act shall be known as an indeterminate sentence.

SECTION 2. If it appears to the board of parole for the state prison and the Massachusetts reformatory that a prisoner held in the state prison or in a house of correction upon an indeterminate sentence imposed under this act has reformed and is likely to lead an orderly and law-abiding life, and it has a reasonable assurance that he will not become a charge upon public or private charity, it may issue to him a permit to be at liberty during the remainder of his sentence, upon such terms and conditions as it shall prescribe.

If the holder of a permit issued under the provisions of this act, violates any of its terms or conditions, or violates any law of this commonwealth, before the expiration of his sentence, such violation shall make void such permit. The prison commissioners may revoke any permit to be at liberty issued under the provisions of the preceding section.

SECTION 3. When any such permit has become void or has been revoked, they may issue an order authorizing the arrest of the holder thereof by any agent appointed by said commissioners, or by any officer qualified to serve civil or criminal process in any county, and the return of such holder to the prison from which he was released.

A prisoner who has been so returned to his place of confinement shall be held therein according to the terms of his original sentence. In computing the period of his confinement, the time between his release upon permit and his return to prison shall not be considered as any part of the term of his original sentence.

SECTION 4. This act shall take effect on the first day of July of the present year.

R. H. G.

### Public Defenders of Portland and Los Angeles Write of Their Work.—

R. S. Gray, who has been one of the foremost attorneys on the Pacific Coast to advocate the need of public defenders in our criminal and civil courts, and who believes that there should be a reorganization of bar that would provide for a paid bureau of lawyers to conduct all trials in courts, has received two letters, one from the public defender recently appointed by the superior court in Portland, and one from the public defender of Los Angeles, whose office was created by provision of the county charter adopted last year. The letters are reprinted here from the *Recorder* of San Francisco of March 2, 1914—Ed.

From Walter J. Wood, Public Defender of Los Angeles.

Dear Sir: "I am firmly of the opinion that there should be lawyers provided to conduct criminal cases, both for the prosecution and the defense. \* \* \* \*

"There has been no appointment of assistant public defender. However, several attorneys are now at work in the office under temporary appointment as deputies or assistants. Mrs. Norton is also at work in the office as adjuster, having received a temporary appointment under authorization from the Board of Supervisors. The Civil Service Commission has not held an examination for adjuster up to the present time and therefore there is no eligible list from which to appoint.

"We have more work than we can attend to, practically all of the people



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accused of crime, who have no funds to employ counsel, having called for the services of the public defender. About twenty applications have been received each day for aid in the civil branch of our work. Many of these cases are such that we are not permitted to handle them under the provisions of the charter.

"I see now, more than ever, the great need for the office of public defender, and I am glad that you are working to the end that the office be created elsewhere."

From Henry L. Lyons, Public Defender of Portland.

Dear Sir: "Yours of the 23rd instant, in reference to my work here as public defender, has been received, and I take pleasure in giving you what information I have concerning the office and circumstances.

"Municipal Judge Stevenson, who is the police judge, and who also acts as committing magistrate in State cases, felt the need of a public defender in his court, and as there was no way to provide a salary at present for a regular incumbent of the office, he took up the matter with Mr. Arthur Langguth as President of the Multnomah County Bar Association. It took but a very short time to make the necessary arrangements, and it was decided to attempt to secure regular practicing attorneys who would be willing to devote, say, one week each to the work, without compensation. I was very glad to have the privilege of being the first to take up the work, and I spent two weeks defending persons who were unable to hire an attorney.

"The Bar Association has prepared a list of attorneys who are willing to donate their services for one week each to this work, and these names are submitted to Judge Stevenson from time to time for appointment. I have no doubt that the work can be continued for a long time in this way, if necessary.

"I was provided with a key to the room in which the prisoners are placed while awaiting trial, and I went in to see them before court every morning, and as often during the day as necessary. I always explained to them that my services were free and that I had been appointed by the court to represent those who desired the services of an attorney and were unable to get one. Those who were able to pay an attorney were advised to employ one, but I was always careful never to recommend, or even to suggest, the name of an attorney to them. A great many of the prisoners availed themselves of my services, and I had the satisfaction of feeling that I was of assistance to some of them at least.

"In the press of police court work, with the police officers, and the City Attorney's office, or the District Attorney's office, all on the side of the prosecution, a prisoner who is without an attorney is at a great disadvantage in the trial of his case. The municipal court is particularly the people's court. It is the court that deals more closely with everyday affairs of life, and comes into closer touch with the people than any other, and it is especially important that every protection and care should be given to those who are brought before it. Their cases may seem small to the public, but they are exceedingly important to those involved, and while Judge Stevenson is as kind-hearted and sympathetic toward the accused as a judge could well be, yet it is impossible for any court to see that their side of the case is properly or fully presented, and that they avail themselves of their legal rights and defense, if they have no attorney to assist them. As Judge Stevenson said to me, the

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mere fact that someone is present in court to take the side of the accused, acts as a sort of balance and preserves the equilibrium of justice.

"As the work was new here there was some question as to how far the public defender should go, or how energetic he should be in the defense of those he represents. For that reason it was thought best, at least at first, that the public defender should limit his defense to assisting the court in bringing out the prisoner's side of the case, rather than making a vigorous fight on technical grounds if necessary, to secure an acquittal. I understand that in Los Angeles the public defender is expected 'to work as diligently in the defense of any accused person as the District Attorney does in the prosecution.' That seems to me to be a very good guide or rule of conduct for the public defender.

"My hope and belief is that the need of a public defender will become so apparent, not only here in Portland, but everywhere else, so that the office will be definitely created and a sufficient salary provided to secure a competent man for the place. Such a man could be of great benefit to the poor and helpless.

"There is nothing private or confidential about this communication, and you are at liberty to make such use of it as you see fit. I am glad to give the matter all publicity possible, in the hope that it will assist in spreading the movement and that it will soon become established all over the country." \* \* \* \*

**Novelties in the New Italian Code of Criminal Procedure.**—As usual, the October, 1913, issue of *La Scienza Positiva* is replete with important and interesting matter for criminologists. There are original articles, notes on legislation, reviews of books and articles, and learned comments on recent decisions.

The original article is a continuation of an article begun in the September issue, and deals with evidence in the new code of criminal procedure. The article treats of the novelties introduced into the new code. Among these are the following: The public prosecutor is to adduce before the trial court, testimony on both sides,—testimony not only inculcating the defendant but also testimony exculpating him. The author of the article, Salvatore Messina, maintains that this provision of the code is to be interpreted broadly; and that although a quasi-judicial attitude on the part of the public prosecutor is fit for the preliminary hearing, it is not fit for the subsequent trial in the higher court, because, says he, the public prosecutor before presenting the case to the magistrate, makes an independent examination and comes to a conclusion as to the probability of the defendant's guilt. And it is only then, when he believes that there is a sufficiently strong case against the defendant that he presents it to the magistrate.

In the higher court the public prosecutor's judgment has been sustained by the magistrate, and so the public prosecutor comes to the trial there, not to present doubts as to the guilt of the defendant but to prove a case against him.

The method of the production of proof is to have ready for the inspection of the other side a list of witnesses two or three days before the trial, depending on the court in which the trial is to be held. The testimony may be any element of proof. In fact the public prosecutor and the parties may ask not

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only for the calling of the witnesses, but for documents. If a witness has given testimony before a magistrate, he may under certain conditions (as for example the consent of the parties) not be called to give oral testimony in the higher court; but his testimony may be read. A great deal of time is lost during trials in the higher courts because of the production of witnesses in respect to whom cross-examination is inadvisable or unnecessary. R. F.

**Crimes and Punishments in the New Election Law of Italy.**—An article by Gaetano D. Amelio in *La Scuola Positiva*, October, 1912, on crimes, punishments and disabilities in the new election law. The new election law of the 26th of June, 1913, is the outcome of the old law of 1905. The main feature of the reform caused by the new law is the much larger participation of citizens in the political suffrage.

Crimes against the electoral franchise were for long considered trifling. But the new code views them with a stern eye and punishes them with long sentences. Pardon is no longer allowed for such crimes. The statute of limitations has been amended and the time within which an action may be begun has been extended.

The law claims to guarantee the purity of the vote. Any citizen may instigate an action against a violator of the law. There has been a great deal of discussion as to whether this means that anyone may carry on an action. But the author maintains that to instigate an action is the function under the new law of a private person, and to institute and carry it on is the function of the public prosecutor.

Crimes may be committed at any one of three stages: that of preparation for voting; second, that of voting; and third, that of making the vote effective. The punishment of an election officer who violates his oath is graver than that visited upon one who is not. The conditional sentence is not available to an officer, and pardon is not obtainable. R. F.

**Coercion by Ministers of Religion in the Italian Code.**—An interesting provision in the code is that pertaining to coercion by ministers of religion. Church and State are separate in Italy, but action between them is not always harmonious. Ministers of religion are prohibited from talking on political matters in places of religious worship, and at meetings of a religious character. The phrase, meetings of a religious character, was a stumbling block, but after explanation by Minister Sonnino, it was left in the law intact. It means "meetings called and held in the exercise of religion, that is, meetings to which those who are there have been invited to do acts of religion."

Among those who are deprived of the right of voting are the following: Persons convicted of idleness, vagabonds, and begging. These have, under the new code, become permanently, instead of only temporarily, as under the old code, disfranchised. Persons guilty of fraud, misappropriation, breach of trust, theft, conspiracy. The new code, contrary to the old one, enumerates all the crimes for the commission of which disfranchisement follows. And only for these may the right to vote be taken away. R. F.

**Defamation in the Italian Penal Code.**—There is a very interesting decision on page 935 (*La Scuola Positiva*, October, 1912.) based on Article 391 of the penal code relating to defamation. The reader will note that the essential elements of criminal libel are the same as in England and America. The

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decision gives in condensed and admirable style the whole doctrine of defamation. The material element in criminal libel is the holding up to public contempt, hate and ridicule of a person, and injuring his honor and reputation. A writer may not be held guilty of libel if he has investigated sources worthy of credibility and if he writes without motives of hate. R. F.

### **Regulation of Interstate Commerce as to Products of Convict Labor.—**

The following report from the Committee on Labor of the House of Representatives relates to House Bill 1933, introduced by Mr. Booher:

"The Committee on Labor, to which was referred the bill (H. R. 1933) to regulate interstate commerce in the products of convict labor, submits the following report and recommends that the said bill do pass without amendment.

"The bill is as follows:

"A BILL to limit the effect of the regulation of interstate commerce between the states in goods, wares, and merchandise wholly or in part manufactured, mined, or produced by convict labor or in any prison or reformatory.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all goods, wares, and merchandise manufactured, produced, or mined wholly or in part by convict labor, or in any prison or reformatory, transported into any state or territory of the United States, or remaining therein for use, consumption, sale, or storage, shall, upon arrival and delivery in such state or territory, be subject to the operation and effect of the laws of such state or territory to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in such state or territory, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise."

"The question of convict labor, in its moral and economic aspects, has been the subject of public discussion for many years. Owing to crime or misfortune, a considerable, and apparently increasing, number of our population are yearly compelled to lose their liberty and suffer confinement, more or less protracted, in penal institutions. Humanity and health alike require that these unfortunate individuals should have both employment and exercise; and sound policy dictates that such employment should be directed in channels capable in part, at least, of requiting the cost of their maintenance, lest they should become too great a charge upon the public. Had the practice of all the states confined itself within the limits of health for the prisoner and such returns for his labor as would repay the cost of maintenance, it is not probable that any economic issue would ever have grown out of our prison system. But in course of time the enforced labor of numerous individuals under single management attracted both public and private cupidity; and in some American commonwealths the unhappy convict has been exploited not only to the profit of the state, but the products of his labor have become a menace to the economic welfare of the whole community. Hence have arisen the protests of labor organizations against the competition of convict goods with the products of free labor; hence the outcry of manufacturers at the control of the market in important lines of industry by prison plants; hence the efforts of various states to protect themselves by local laws against commerce in prison commodities; and hence the more recent efforts of publicists to curtail the evil through Federal legislation.

"According to the report of the Commissioner of Labor for the year 1905, the value of goods produced by convict labor in 296 of the larger penal institutions in the country in that year was, in round numbers, \$34,000,000, represent-

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ing the work of some 50,000 convicts. Of this output the leading product was that of boots and shoes, which aggregated, in round numbers, \$8,500,000, or about 25 per cent of the whole. The leading industries which followed were farming, the manufacture of clothing, furniture, brooms and brushes, binding twine, etc., and coal mining. (Twentieth Annual Report of the Commissioner of Labor, p. 20.)

"This product is small, apparently, when compared with the great mass of the products of free labor in the whole country, but the uniform testimony of the manufacturer and the free workman is that, when convict goods are thrown upon the market, demoralization and depression is the invariable result, in some instances prices falling below the cost of production (p. 25). For example, the boot and shoe industry in the year 1904 suffered from prison competition in 11 states, where convict-made shoes exceeded, by 39 per cent, the export shoe trade of the whole United States for the year ending June 30, 1905. In furniture the competition is severely felt in certain lines, as a single company controls the entire product of seven prisons in five states. The same is true of cooperage in the Chicago market, and likewise in certain lines of clothing, etc. (pp. 49-51.)

"As a result of such competition wages are forced to the lowest limit in the effort to lower the cost of production to that of the prison contractor, until in some cases it has resulted in a deterioration of quality of material used, and in others an entire abandonment to the prisons of the manufacture of certain grades of goods."

"Some states, whose convicts are permitted to manufacture only for state and charitable institutions, have sought to protect themselves by law against the sale of convict goods from without. Among those which have at various times sought to regulate or restrict the traffic in goods of this character are California, Colorado, Indiana, Kentucky, New York, Ohio, Wisconsin, Oregon, Oklahoma, Texas, Pennsylvania, New Jersey, and Maine. But these restrictions have failed, either wholly or in part, in consequence of the inability of the states, under our system of government, to regulate their commerce with other states. Congress alone has this power in our government.

"The Congress shall have power \* \* \* to regulate commerce with foreign nations and among the several states and with the Indian tribes." (Constitution, Art. I, sec. 8.)

"Bills of similar import to the one under consideration have been reported favorably heretofore from this committee in several Congresses, and at the second session of the Sixty-second Congress a bill of identical form passed the House of Representatives, but failed of report from the committee of the Senate to which it was referred.

"The object sought to be accomplished by this legislation is to lift the protecting hand of Congress from convict goods shipped from one state into another state—which shipment, of course, constitutes an act of interstate commerce—and subject them, upon arrival at their destination, to the local law of the state into which they are shipped. But for such permissive act on the part of Congress such goods would remain interstate commerce, free from state control, until their delivery to the consignee at the point of destination, and beyond that, even, until the consignee had disposed of them or broken the package in which they were shipped. (*Brown v. Md.*, 12 Wheat., 419; *Low v. Austin*, 13 Wall., 29; *Leisy v. Hardin*, 135 U. S., 100; *Vance v. Vandercook Co.*, 170 U. S. 438; *Lewis*, Federal Power Over Commerce, pp. 4, 5.)

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"While the right to sell an article of interstate commerce in the original package, in the absence of Congressional legislation regulating the subject, is thus guaranteed by repeated decisions of the Supreme Court, yet that it is competent for Congress, by appropriate legislation, to subject this right to state control has been fully illustrated by the history and adjudication of the Wilson Act of August 8, 1890, dealing with another subject of interstate commerce, along lines identical with those involved in this bill.

"The Wilson Act was as follows:

"That all fermented, distilled, or other intoxicating liquors or liquids transported into any state or territory, or remaining therein for use, consumption, sale, or storage shall, upon arrival in such state or territory, be subject to the operation and effect of the laws of such state or territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquors or liquids had been produced in such state or territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

"As is well known, this act was violently assailed on the ground of its unconstitutionality, in that, as alleged, Congress had delegated its authority over an admitted subject of interstate commerce to the state legislatures. But its constitutionality was upheld by the Supreme Court in the case of *In re Rahrer* (140 U. S. 545), wherein Chief Justice Fuller declared:

"No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so."

"And again the same court affirmed:

"It has been settled that the effect of the act of Congress is to allow the statutes of the several states to operate upon packages of imported liquor before sale." (*Rhodes v. Iowa*, 412.)

"The act, however, fell short of its avowed purpose to subject the interstate commerce goods to state law upon their arrival in the state, for it was held by the court that 'arrival in the state' meant at the point of delivery; and it was again declared that 'the Wilson Act, which subjects such liquors to state regulation, although still in the original packages, does not apply before actual delivery to such consignee, where the shipment is interstate.' (*L. & N. R. R. Co. v. Cook Brewing Co.*, 223 U. S. 70.)

"Therefore, considering these and other deliverances of our highest court regarding this question, it is confidently submitted that the object of this legislation, to wit, the authorization of the state to prohibit, by local law, if it see fit, the sale of convict goods in the original package imported from within its borders, is not amenable to constitutional objection; and it is believed its legal effect will be to enable enlightened commonwealths, so inclined, to deal more wisely and more effectively with this important moral and economic issue."

R. H. G.

## JUVENILE PROTECTION.

**Two Child-Protection Congresses.**—Two notable Congresses were held within the last year in Europe to consider ways and means for more effective handling of the problems of dependent, neglected and delinquent children. The first, held at Brussels in July, was distinctly international in character, and

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though it failed of one of its declared purposes, namely, to establish an international office for child-protection similar to the International Labor Office, still it carried out its more obviously educational purposes with conspicuous success. Brussels was chosen as the meeting place largely because of the new and comprehensive Belgian juvenile court law (of May 15, 1912). The first question debated by the Congress was whether juvenile courts should add to their penal function jurisdiction over all other phases of the child problem, e. g., guardianship, adjudication of parental authority, etc. Opinions varied. The Belgians stood for limiting the court, or at least for its very gradual assumption of further powers. The French shared with Herr von Polzer of the Austrian Ministry of Justice the view that further competence should be conferred upon such courts. Incidentally it was reported from every side that so far the children's court has been a success, especially in its getting away from routine and in its individualizing of treatment. After prolonged discussion the Congress by a small majority voted yes upon this question. The next question had to do with probationary care of children. There was some difference of opinion as to whether the judge should retain his personal oversight of all children admitted to probation or whether his duty ended when he had committed such children to responsible officers or private citizens. In small cities it was held that the judge might be able to maintain his personal oversight; but in larger places this would be impossible and his chief work would consist in directing the general policy of the probation staff. The general conclusion urged that judges be freed from formalism in their procedure in this whole matter of probationary oversight. The third important question presented was that of the technical training necessary for a probation officer (*Jugendgerichtshelfer*). While the text of Fraulein Elsa von Liszt's paper was the English phrase, "men not measures," she did not go so far as to suggest that personality could not be made more efficient by technical training. To the contrary, she urged that all probation officers, volunteers or professional, should know the legal basis of their work, the most important provisions of criminal law and procedure, in so far as they concern children. Also a certain familiarity with some of the principles of the law of domestic relations, of child protection, of the poor law, insurance law and commercial law is desirable. Furthermore lectures by experts upon certain phases of the child problem were recommended. Berlin, with its systematic training courses instituted by the *Berliner Zentrale für Jugendfürsorge* represents the most notable attempt so far to give this technical instruction. The Congress unreservedly approved of these suggestions and added that child welfare workers should also have a thorough knowledge of the youthful *Psyche*. Closely connected with this recommendation stood the final topic discussed, namely, the need for studying the abnormal child. The Congress urged that penal procedure on behalf of children be carried on in closest co-operation with physicians and constructive educators.

The *Salzburg Kinderschutzkongress* gathered over a thousand delegates from all parts of Austria. It was a purely local Austrian meeting, devoted to treating home problems. The most pressing of these problems seemed to be how to get really enacted the several legislative projects now and for many years past held up in the lower house of the Austrian Parliament. Not the least important part of this legislation was the warmly discussed problem of legal regulation of child labor, the important and delicate (1) problem as one

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writer phrased it. Indeed it was frankly avowed by the President of the Congress, Dr. Baernreither, that the problems of child labor and of child neglect are merely two phases of the one fundamental problem of distress (*Not*). Hence the note of prevention sounded throughout the deliberations of the Congress. This justifies quite clearly Dr. Lederer in his observation that the whole trend of modern child protection is in the direction of the normal child. He might have added to his title the subtitle, Two Conservation Congresses. (Dr. Max Lederer, *Osterr. Zeitschrift f. Strafrecht*, 6 & 7 Heft., 1913.)

A. J. TODD, University of Illinois.

**Congress of the Italian Society for the Care of Delinquent Minors.**—*Secondo Congresso Nazionale delle Società di Patronato per i minorenni e per i carcerati. Rivista Penale*, February, 1913.

This society, which has for its object the care of delinquent minors and discharged prisoners, held its second meeting recently in Turin. Among the topics discussed appear the following: Practical Means for Preventing Juvenile Delinquency, Work of the Elementary School in Preventing Delinquency, Methods of Publicity and of Popular Propaganda in the Prophylaxis and Cure of Juvenile Delinquency, The Colonization of Abnormal Children, Corporal Punishment as Punitive and Corrective Treatment for Juvenile Delinquents, Courts for Children, White Slave Traffic. The liveliest discussion of all, perhaps, followed Professor Stoppato's paper on corporal punishments. One feminine voice was raised on behalf of restoring the cat 'o nine tails to common usage. But the predominant sentiment was against corporal punishment for juvenile delinquents as useless and degenerative. Marchioness Tartarini stated that of all the female houses of correction and reformatories she had visited the only one in which the children showed marked degeneration was one in which the nuns used corporal punishments. The Congress adopted unanimously a resolution calling for more adequate legislation on behalf of neglected youth. Naples was chosen as its next meeting place.

A. J. TODD, University of Illinois.

**Report of Italian Commission on Increase of Juvenile Delinquency.**—One gets a very clear sense of the thoroughness and the originality of the struggle that Italy is making against the problem of juvenile delinquency from an article in this number of *The Bulletin, from the Office of Juvenile Protection in Belgium*, Vol. 1, No. 4, July, 1913, by C. Campioni, President of the tribunal de police at Bruxelles. (pp. 241-253.)

He outlines the work of the various sections of the Royal Commission appointed on Nov. 7, 1909, to study the causes of the progressive increase of delinquency of minors and to propose legislative reforms which might remedy it. One group of Section III was detailed to make a study of a single code—a code that should gather together all laws and all regulations pertaining to minors in order to establish legal uniformity in the texts. The general report and a preface regarding this code form the fifth volume of the publications of the Commission and it is chiefly of this that M. Campioni writes.

The author of the report, S. Exc. le sénateur Quarta, is of the firm belief that in order that the different institutions now existent or to be created and the different duties and functions regarding guardianship, aid and correction of rebellious, guilty or delinquent children, may act promptly and harmoniously in



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a common effort, it is indispensable, on the one hand, to unite in a single code all the various laws, and on the other, to unify all the different and multiple duties of many functionaries into the office of a single magistrate in each province or "arrondissement," "who in *full authority* should watch over, guide and control all that which touches upon the functions of different administrative or judicial organizations either private or public in character, who should assume the application and the respect of the ensemble of the legislative and regulative measures and co-ordinate their actions with the common end in view: the education, the improvement, the safety of children."

According to the plan it is a "District Magistrate" in whom will be vested this consolidated power of guardianship, protection, instruction, discipline and reformation of minors. He will be chosen from the functionaries and the judiciary order, having at least the grade of Judge or of Substitute of Attorney General. It is urged not as merely useful but as highly essential that if possible he be learned in biological, pedagogical and social sciences. To this end the plan includes the appointment of chosen auditors versed in these matters for the most important offices in order to call them in the course of their career to be efficient magistrates of districts.

The District Magistrate is given complete authority, yet that he be not without a superior authority to which he may turn for consultation in case of need and which in turn may intervene in case of his negligence, lack of efficiency or abuse of his functions,—there would be created a Supreme Tribunal sitting in the Ministry of Justice, composed of a Councillor at the Court of Cessation of Rome, of a State Councillor, of an official Professor of the University of Rome, whose department is that of the psychological, social and psychiatric sciences, of a director of the Department of Labor, and of three other members to be chosen respectively by the Minister of the Interior, of Justice and of Public Instruction, from among their functionaries of a rank superior to that of "chef de division," and finally of three others of *either sex* chosen because of their special ability.

That the Magistrate may work effectively it is emphasized that he should have agents to obtain for him all information pertinent to the case of each juvenile offender and also institutions—sufficiently numerous and various in function—with which to carry out whatever action seems wisest with respect to such individual child. To obtain information for him there are "special police" who are all to be under his immediate dependence and supervision. (Private institutions, it was decided, should not come under State control but were to group themselves into a federation in each province and to co-operate with the judge.)

The second book of the report deals with the determination of the character of the social consciousness and educational development the child receives from home and school, and with plans to better the control of these important factors by more vigilant watchfulness and more strict and enlightened legal measures, if they are found to be in any measure the cause of juvenile crime.

Private and public charity go far in protecting the life, the habits and the future of the child, but as they now exist the Commission frankly states "the effort spent and the means adopted are poor and insufficient. New means should correspond to new needs if one would work out or at least stop the evil each

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year more threatening." So he pleads that all work together to build up new social organs.

So runs the report, treating also of new methods of enforcing education, of dealing more wisely with the abnormal child, of forming more severe laws of emigration, of controlling alcoholic parents, etc. It is full of a sense that the law must follow the child closely in the home and see that the parents discharge the duty of education under penalty of penal sanction that shall take some form they will respect and must obey. To this end the Commission has revised the law respecting parental authority and invested their enactment, too, in the District Magistrate.

The report insists that the supervision under parole of all young girls and children under 10 years be in the hands of women.

The reviewer states that Section VII contains the most innovations and is important, for it regulates and outlines the disciplinary measures entrusted to the District Magistrate.

In many-sidedness and detail, in its respect for law that is useful and its enterprise and resourcefulness with respect to law that does not exist or that does not fit the facts, in its concentration of power in one specially equipped person, responsible to an expert and singularly representative supreme tribunal, the plan for the control of the problem of the juvenile delinquent in Italy is worthy of careful consideration.

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**Italian Congress for Protection of Neglected Children.**—The *Revue de Droit Pénale et de Criminologie*, No. 7, No. 2, Nov. 13, contains also a digest of the report of the Second Italian Congress for the Protection of Neglected Children, held in Turin in October, 1912, written by the secretaries of the association, Dr. T. Dalnozzo and Prof. C. Tovo.

It indicates that initiative of private individuals and of the state had been aroused by the disquieting increase of juvenile criminality. All the work in the congress was dominated by certain general ideas; responsibility of society, necessity of special treatment for the delinquent under age, preeminent need for the use of preventive and educative measures. The most interesting communications made to the congress are summarized as follows:

1. Group A. A paper indicating means of preventing delinquency of minors through local federations of all charitable institutions and homes of refuge for neglected children with the three fold purpose of diminishing the expense of administration, of co-ordinating the efforts of various charities and of making available all the different forms of charity. As was to be expected, many institutions refused to belong to such federations, fearing the loss of their independence. The advantages of such federations, however, seem so great that it seems advisable to make it compulsory for all charitable institutions to join the federations.

Another member suggested the founding of an international office or committee for the protection of childhood. Then the question of creating a central office to gather information and send the children to appropriate institutions was studied. The office, a first step towards the federation, would aim to apply to each child the treatment he needs without the omissions, the un-

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certainties and delays of the present system. It would be adjusted to the independence of the different charitable institutions, composed as it would be of the delegates of these institutions; in short, there would be absolute respect of the statutes and wills at the base of every institution, and yet co-ordination of the practical action of all the institutions in order to increase their effectiveness.

Secondary organizations are to complete this central office. Homes for immediate refuge and intermediate institutions are to act as safety valves against errors; children who cannot stay any longer in the asylum where they have been previously admitted are to be held there under observation.

Group B. Role of elementary education in the prevention of infractions.

The reporter first stated that the Italian elementary school does not answer to this educative aim and he demanded a system of education more rigorously obligatory, an increase of the number of school hours and school days, with games, exercises and occupations in school, legal dispositions completing the law of 1911 on the intervention of the state in the school charities in want of private initiative, and a reform of the school programs in a less intellectualist but more human way.

A report about the school system established since 1897 in the prisons of Lodi by the society of protection of this town showed the effectiveness of instruction given in prisons in preventing new offenses. The reporter spoke of the necessity for the state to favor particularly with subsidies the societies of protection which have founded such schools at their own expense.

Another communication was made concerning the assistance for abnormal school children as preventive measures against juvenile criminality. It recommended the establishment of schools for defectives and of a legal medico-pedagogical record for all minors.

Group C. Means of preventing juvenile criminality. The role of school charities and industrial schools is made evident.

Group D. Concourse of voluntary agencies and of the magistracy to prevent and diminish juvenile criminality.

A study of 194 minors prosecuted in Turin showed that the origin of criminality among children is much more social than physiological.

Group E. Means of popular propaganda as to the treatment of young delinquents.

II. Corrective and educative measures to be applied to the young delinquents.

Group A. Agricultural colonies and placing families.

Speaking of the delinquents who had not finished their studies, one of the reporters insisted on the necessity of giving them some means of continuing their apprenticeship of their studies while in reformatories. He spoke of the technical school of the House of Protection of Florence, and advised the establishment of similar institutions in other towns for imprisoned children.

Another member recommended that the sanitary service in the reformatories be made like that of the insane asylums, that is to say, that it include a sufficient number of physicians devoting all their time to the institution. They would keep the inmates under observation, and study the questions of hygiene relative to them.

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Group B. Corporal punishment as a means of correction and punishment of young delinquents.

One of the reports discards them entirely; two others throw them out as a principle, admitting them only in the exceptional cases when they are the only effective means.

### III. Special magistracy for minors.

M. Carnevale advised that the problem of juvenile criminality be not isolated by an excessive specialization to avoid putting an abyss between the successive treatments of the delinquent under age and the same of age. M. Carnevale did not believe that it would be advisable to give to the same magistrates all the powers concerning the delinquent children (education, correction, protection, supervision of the exercise of paternal rights). This was not the opinion of others who insisted that the same person should assume the preventive and repressive task.

### IV. Aid societies for minors and prisoners.

M. Facchinetti thinks that the regime of probation release is equally applicable to minors of both sexes and that it is efficacious only up to eighteen years of age.

As for the aid societies, the law could allow them to act upon others than the minors released on condition. Women must be admitted to the committees of these aid societies.

The two chief difficulties which these societies encounter are the mistrust of the family of the minors and the recruiting of the volunteers in charge of the supervision. It seems advisable that volunteers should be preferred to official delegates who would increase the mistrust of the people.

Group B. Development and action of aid societies for criminals in prisons, and released prisoners.

M. Dosia insists on the importance of personal qualities and devotion in this matter, and on the urgent need of a solid organization grouping the different existing societies.

### V. Action of the state in the assistance of neglected children.

A report was read on the organization of such an assistance. Neglected children are those of less than 21 years of age, who lack benefit of education, and whose parents or legal guardians are unworthy or inefficient. The state owes them protection. There would be established for the exercise of this protection a committee of assistance in every town, a magistrate for minors in every district, a general direction in the center. Except the minors of warped character, all children under age must be found an immediate protection and a definitive refuge according to their needs, till they are 19 years old. (Meanwhile the state must concern itself with the parents or the guardians.) The state would advance the expenses for such a protection; these expenses would be supported by the state, the districts, the towns, the local institutions of public charity, etc.

The book ends with the discussions in which magistrates, lawyers, professors, members of aid societies took a part. It shows in a striking manner the strenuous effort that Italy is making for the protection of children.

JEAN WEIDENSALL.

## CRIMINAL REFORM AS AN INDUSTRY

**Moving Pictures in Italy.**—The Italian government in ministerial circulars (Mar. 15, 1907, Mar. 31, 1908, Aug. 25, 1910), had already recognized the bearing of moving picture theaters upon public morals and public order. In Italy as in America, the "movies" tended to glorify the most brutal instincts and perversions of moral sense, or at least to represent such things as were tolerable and innocuous. By easy inference such spectacles tend to cast doubt upon law and order, and upon the public authorities. Hence the government has issued a new and more explicit circular (Feb. 20, 1913), calling for careful inspection and censoring of "movies." No cinematographic spectacle is to be permitted without having first been performed before the procensoring authorities. Having once been authorized it must produce its effect every time it is put on in a new place. Licenses are absolutely prohibited for the following: (a) spectacles contrary to good habits and public decency; (b) spectacles contrary to national dignity, honor or reputation, or contrary to public order, or which might disturb good international relations; (c) spectacles reproducing striking crimes or acts or facts which might serve as a school for crime to impressionable persons; (d) spectacles offensive to the dignity and prestige of the public authorities and of the agents or functionaries of the police service; (e) scenes of cruelty, concerning either men or animals; (f) acts or facts which might induce disgust, *e. g.*, surgical operations. (*Penale*, June, 1913.)

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## PENOLOGY.

**Criminal Reform as an Industry.**—"Massachusetts has an extraordinary opportunity, as it seems to me, to be both the pioneer and the instructor of the whole country in developing and applying a new and better treatment for persons convicted of crime. It already possesses a greater number of prisons, a greater variety of public institutions than any other state in the country, and perhaps than any foreign country. It has in a scattered and unco-ordinated manner practically every agency that is required for the adequate study and management of its anti-social members. Some changes and improvements, of course, needed, but mainly through the proper rearrangement of its agencies it can set and maintain the standards of a new and more practical and more humane penology.

"Chairman Randall of the Board of Prison Commissioners made the following statement in preface to an explanation of what the board wishes to accomplish through the group of nineteen bills affecting prison control and procedure, which it has filed with the legislature. His own ideals of what new penology should be and how it should accomplish its purposes were set forth in an interview in the *Transcript* last summer. It should be a matter of satisfaction to the public that Chairman Randall's study of our penal administration during the months since then has convinced him, as one of the country's most penologists, that Massachusetts does not need to build a new house, but to rearrange in better fashion the furnishings and administration of what she already has.

"This point is of no small consequence. If the reform of our treatment of criminals on modern and progressive lines required a huge expenditure of new capital for plant, conservatism and timidity might easily be hidden

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the aspect of financial prudence. But as the facts stand, the legislature and the public can consider the changes proposed by the prison commissioners solely on the merits these proposals have as a better way of dealing with the nearly seven thousand persons who are now confined in jails and prisons for offenses against the criminal statutes. \* \* \*

"I desire to see the substance of these bills enacted into law," said Mr. Randall, in an interview given to the *Transcript*, "but I want to see them passed because the members of the legislature have become convinced that they are just and expedient. I believe that the changes we propose are desirable, and in the interest of the public as much as of the body of convicts. But our new plans, and our proposed administration of them cannot be wholly successful or beneficial unless they have the support of the judgment of the members of the legislature and of public opinion. I hope that a full and frank discussion and explanation of the whole matter will bring this support to the board's plans."

"State ownership and administration of all prisons and jails within the commonwealth is the first and most sweeping change proposed by the board. This change is absolutely essential to the proper use of the public 'plant' for the detention and treatment of convicts. At present each county prison, or house of correction, holds a mixture of all sorts of convicts—the practically normal but misguided or impulsive offender, the naturally vicious, the feeble-minded, the habitual alcoholic, every variety and almost every age are lumped together. Naturally, it is next to impossible to give the different groups in one large prison the treatment that is most appropriate to each group, and to each individual. The new penology aims to deal with the convict as an individual, and this is impossible until there is a chance to subdivide and distribute the prison population in different institutions, each of which shall have its special type of corrective work to do.

"There are prisons enough in the state to allow of all desirable separation and special handling of the various types of convicts. The necessary step towards accomplishing this modern individual treatment is to put all the institutions under one management. Then the class of feeble-minded can be grouped by themselves and receive the treatment that is appropriate to their condition. The inebriates can be put in another group or two. Those, and their number is large, who are suffering from certain dangerous diseases, can be put into still another group in an institution which can be devoted to dealing most effectively with their special needs.

"Aside from this segregating for special treatment of those who are markedly abnormal, the change would allow vastly better management of the industries in the houses of correction (the county prisons). As the case now stands, the willing and hopeful convict worker sits at the workbench beside the stubborn loafer. The impulses in him that lead toward reform are opposed and weakened by association with the unregenerate defiance of the convict who is waiting for the passage of mere time to turn him loose on society with his anti-social attitude unchanged. From the point of view of economy, as well as efficiency of the reformatory work attempted by the state, the proposed central control of all jails and prisons is a necessity.

"Masters of prisons, jailers, and their subordinates are left undisturbed in their tenure of office and their pension rights, but under the proposed law,

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these masters and their whole staffs of subordinates, the commissioner and assistant commissioner of penal institutions in Suffolk County, and their subordinate staffs, jailors and their assistants would come under the authority of the Board of Prison Commissioners.

"But the tenure of the present masters and the penal commissioners of Suffolk are carefully guarded, since it is provided that if the prison commission decides to remove any one of them it must be for cause and after a hearing, and moreover that such removals must be approved by the Superior Court after an additional hearing. \* \* \* Future vacancies at the head of the various prisons and jails to be filled by the prison commission; and removals of such appointees may be made by the board after a hearing and for cause, without the appeal to the Superior Court, which is provided as a special safeguard for present incumbents. \* \* \*

"Adequate enlargement of the executive staff of the prison commission is almost a condition precedent to the acceptance of the changes proposed by the consolidation bill. At present, the board's staff is much too small to administer efficiently the larger number of institutions which the board wishes to control. Two additional deputy commissioners are specifically provided for, at salaries of \$3,500 a year. In addition, the board asks power to delegate to any of its members all the powers of the whole board except those relating to the parole or transfer of prisoners.

"The necessity of this and other increases in the executive staff are apparent when one sees that the proposed law would bring under the control of the prison commission twenty-six prisons, besides the numerous jails. \* \* \*

"One of the most important of the other changes proposed by the prison commission provides for cutting out the action of the grand jury on criminal charges against offenders who plead guilty. This bill aims at burdens and occasional abuses arising from quite different sources. At present a person arrested on a charge of crime is put into jail and kept there until the grand jury has acted on his case, and in the event of an indictment, until the end of his trial. This often means many months of destructive idleness in the jail, and the results to many prisoners are not only what amounts nearly to double imprisonment, in case trial ends in conviction, but physical and mental suffering and damage that the law does not intend to impose as punishment for the crime. In some counties of the state the Superior Court, which tries criminal cases, has only two or three sessions a year, and it is possible for an accused person to spend nearly six months in jail before the grand jury acts on his case.

"It is now proposed that when a person arrested for crime desires to plead guilty, the district attorney, taking the facts disclosed by the prisoner, may lay an 'information' against the prisoner before the court, which may then proceed to sentence the prisoner as if he had pleaded guilty after the usual process of indictment by the grand jury. The inhumanity which often marks long jail waiting for the action of the grand jury was impressed upon Chairman Randall when he was warden of the St. Cloud prison in Minnesota. In that state many grand juries met only once a year. One prisoner under his charge, awaiting action by the grand jury, was so nearly wrecked by the idleness of his jail waiting that Mr. Randall set about securing a better procedure. This required an amendment of the constitution of Minnesota, giving the leg-

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islature power to authorize the sentencing of a defendant on his own plea of guilty; but by the quiet appeal to reason and humanity which is his characteristic way of asking for improvements, Mr. Randall secured the necessary changes.

"No additional or undue power is given by the proposed law to district attorneys, and in fact the bill covering this item is re-enforced by another which effectually prevents anything in the shape of 'railroading' a man into prison unless the judge who passes sentence is himself corrupt—and that we have no reason to fear in Massachusetts. It is provided that a man shall not be sentenced to prison on his own plea of guilty, either after indictment by the grand jury, or on the proposed 'information' plan, unless he makes to the judge a statement of such facts in regard to his actions as prove that what he did was a crime, and the crime charged. If a prisoner pleads guilty, but refuses to make a statement of facts which if proved by legal evidence would establish his guilt, the judge is required to hold him for trial before a jury.

"Due protection of the prisoner's rights is aimed at in three different bills, the provisions already cited occurring in two of them. Another provision is that which authorizes the Superior Court to appoint a lawyer as counsel to represent all accused persons who have not, or cannot employ, private counsel. Our courts have always assigned counsel to persons accused of capital crime, when the accused could not provide their own lawyers; but this designation of counsel has never been applied to ordinary felonies—felonies being by statute definition offenses which are punishable by sentence to the state prison. Under the proposed law the Superior Court may appoint counsel for the indigent accused, to serve for a year in Suffolk County, and during the term of each session in the other counties.

"That there is a certain amount or degree of 'railroading,' in some of the pleas of guilty, is a disagreeable fact. An ignorant man, arrested for larceny, may have 'sassed' the officer who arrested him; and in that event it is the proved human—or inhuman—trait of the ruffied officer to tell his 'man' that 'You better plead guilty, or you'll get it in the neck.' The new provision for free counsel for such defendants, together with the requirement that a plea of guilty may be accepted only when the accused practically proves his own guilt, will end all chances of 'railroading,' and all unjust punishment due to the defendant's ignorance, so far as the reform of procedure can accomplish these ends.

"An important additional result of the new procedure would be to cut the ground from under the numerous prisoners who protest throughout their prison confinement that they are 'innocent.' This attitude is assumed probably because the professed innocent hopes by his protestations to have a better chance of early parole, or perhaps of complete pardon. Some convicts keep up their protests until they actually believe themselves. The inevitable result is that men who claim innocence remain defiant, and in a state of mind that utterly prevents the beginning of any reformation in their attitude towards society. When Mr. Randall first took office, more than half of the inmates of the state prison were 'innocent;' but there has been a healthy decrease in the number of these self-appointed martyrs, and an accompanying gain in the reformatory work of the prison.

"Since the new penology requires the fullest knowledge of the personal



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quality and history of each convict, so that he may be dealt with according to his needs, the new bills carry two improvements of large importance.

"Sifting of the state prison population for defective, insane, and otherwise subnormal individuals is aimed at in the provision for an assistant physician at that prison. The present prison physician gives only part of his time to the prison work. The proposed assistant would make a study of the inmates and of the new arrivals similar to that made by Dr. Anderson, the psychologist and physician of the Municipal Court of Boston, on those defendants who are referred to him by the judges before the latter dispose of the cases of these persons of doubtful quality. The proposed sifting at the state prison would begin the work of classifying and grouping convicts which is under way at some of the other institutions, and which is essential to the new ideal of treating each convict according to his individual needs.

"Another provision, aimed to give the master of each prison (who under the proposed laws would be empowered to recommend paroles to be acted on by the prison commission) the fullest knowledge of each of his boarders, provides that when a convicted prisoner is sent from the court to any institution the clerk of the court shall send with him a detailed history of the prisoner—'down to the remotest generations,' one is tempted to say, but it is not really quite so bad (or good) as that. The bill does require many specific items, however, and they would be pretty inclusive if completely given. \* \* \*

"A novel proposal—again a result of Chairman Randall's experience in Minnesota—is the plan to make a small, regular money allowance to convicts. This would replace the somewhat mechanical expenditure by the state at the end of a convict's term—five dollars in money, and an overcoat or a suit of clothes. Most of the proposed allowance would be spent at the end of the prisoner's term for such items as were most necessary for each person, and could cover items, such as dentistry, which are not allowed for under the present law.

"Discipline in the prisons would gain from the existence of this allowance. The feeling that he has 'money in the bank' has the same steadying effect on the man in prison that it has on the man outside. Moreover, Chairman Randall's experience in Minnesota proves that small deductions from the allowance, by way of fines for breaches of discipline are extraordinarily effective, without involving the objections against solitary confinement, which is the only substantial punishment at the disposal of our prison wardens.

"Other changes in the existing laws, such as making murder in the second degree punishable by less than life imprisonment; abolishing the minimum term in the state prison, and establishing a maximum of twenty years; provision for the increase of some now too low salaries, and for improvements at the State Camp and the Women's Reformatory, make up a list of proposed reforms that show how minutely our existing criminal machinery has been examined, and how carefully improvements have been planned in the interest of financial efficiency, as well as a better penology. The whole list makes rather difficult reading because of the many elements it deals with. The main items, as here summarized, show the larger changes in policy all of which are progressive and desirable."

BENJAMIN BAKER, in the *Boston Transcript*, Jan. 28, 1914.

## PENITENTIARY ADMINISTRATION IN ENGLAND

**The Penitentiary Administration in England.**—On p. 769 to p. 775 of the *Reveu de Droit Penal et de Criminologic* there is an adequate digest of prison conditions in England in a summary of some pages of a book published by the British section of the Exhibition of Ghent under the title "Ghent Exhibition, 1913: British Official Catalogue." (London, Darling and Son, Ltd., 34-40 Bacon St. E.) We give a short resume of it here.

The idea of using prisons for the punishment of criminals is relatively new. Before the 18th century the prisons were used for the detention of men charged with some crime and awaiting trial and for debtors. Punishment never took the form of deprivation of liberty; for the most serious crimes capital punishment was inflicted, for the less serious the whip, and brand of shame, mutilation, the pillory, the muzzle and the swing. At the same time in order to clear the country of the dangerous vagrants, they transported them to the colonies. This transportation, begun under the reign of Elizabeth (1558-1603) was continued periodically until the revolt of the American colonies. As the population and the wealth of the country increased the criminal laws became more and more severe. Capital punishment reappeared in every new law, for the legislators, suspecting with good reason that 9 criminals out of 10 escaped the watchfulness of the police, hoped that capital punishment inflicted publicly to the tenth would terrify the nine others to such a degree that they would lack courage to defy the law. But this severity had no preventive effect; in fact, murders and thefts had never been so frequent as at that period of English history.

At the beginning of the 19th century great improvement is evident in the administration of justice. Capital punishment, except for the most serious crimes was abolished in 1824; in 1861 it was only inflicted in cases of murder or treason; in 1864 all executions take place within the prisons. Meanwhile the discoveries of Captain Cook suggested the idea of using these new lands for the deportation of criminals. But after forty years the increasing number of deported criminals threatening the respectable element of the colonies' population, all the colonies except western Australia forbade further deportation. The British government had to find in England a system which would dispose of its criminals. The capacity of the old prisons was increased and for the prisoners who could not be accommodated there, they had to take recourse to the old ships out of service anchored in the ports on the rivers. The cells were cubical compartments, made of sheet iron and juxtaposed in the center of the ship. Some of these narrow and unhealthy cells were still occupied five years ago.

In spite of the endeavors of the central administration, the lodgings arranged for the prisoners remained insufficient and the government found it necessary to discharge on condition a great number of criminals chosen among the least dangerous. In 1864 a system was inaugurated which enabled a prisoner, by his good conduct to shorten his term of detention. The shortest period of detention at this time was 7 years; in 1879 it was reduced to 5 years and in 1891 to 3 years, the courts of justice at the same time being authorized to inflict two years of ordinary imprisonment for offenses which before would have been punished by a period of detention in a central prison. The result of this reform was a great diminution of the criminal population. There is an essential difference between the ordinary prisons and the central prisons; whereas in

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the ordinary prisons the men are never allowed to go out, the inmates of the central prisons can be employed in outdoor work under the supervision of armed officers. They work in the quarries, on the farms, at the buildings. Moreover the interior of their prison is a true factory where all trades are carried on. The prisoners print all the documents necessary to the administration of the prison, bind its books, etc.

The reformers of the prisons of the 18th century, fearing the dangers which might arise from freedom of intercourse among the prisoners recommended cellular imprisonment and hard labor as the best means of reforming criminals. At this time two years of hard labor were considered a very serious punishment. The administration was content that the hard labor imposed should be unproductive, as for instance, the disciplinary mill or squirrel-cage and the crank. It was generally believed that the preventive effect of the hard labor was increased in proportion with its unproductiveness.

During the last years of the 19th century many changes have been made under the direction of Sir Evelyn Ruggles-Brise. Gradually the unproductive labor has been abolished. For a time the disciplinary mill and the crank were used to pump water and grind corn; then a system was organized which enabled other governmental institutions to provide themselves with articles made in the prisons and when there were sufficient orders to occupy all the prisoners without detriment to the private industries, the mill and the crank were suppressed. The task mill was demolished in 1902.

The work of the prisoners is not speculated upon by contractors as it is in several European countries. The government buys all the raw materials and then sells all the products directly to the buyers.

Lately, a system has been organized with the purpose of helping the prisoners to begin a new life when they come out of prison. In connection with every prison there is an aid society, the funds for which are provided by voluntary contributions in part, and in part by a sum which is granted by the government. This subsidy is granted under the condition that a committee of the society will meet once a week. One can say without exaggeration that no prisoner, desirous to redeem his past and to begin to work, goes out of prison without help or encouragement.

The penitentiary administration knows all the advantages of a good classification of the criminals. In some institutions, the prisoners are carefully classified in three groups: the first or star class includes the men whose character had been previously irreproachable, the second, those who though not worthy of being put into the first class are not yet habitual criminals, the third is composed of the inveterate criminals. As a proof of the carefulness with which this division is made it has been stated that less than 2% of the men of the first class are charged a second time with a period of detention; 92% are able to find work and earn their living as soon as they are released.

Another classification has been tried in order to separate young criminals from others. It is difficult to fix the age at which a young criminal is still susceptible to corrective influence, but in England the criminals under 21 years of age are put into a special class which is under definite instruction and discipline. This reform was begun in London in 1902. The young criminals

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were lodged in the prison of Borstal near Rochester. The results of the experiment were encouraging but it was found that the periods of detention were not long enough for the corrective influence to have its full effect. It seemed necessary to look after the young prisoners during the first critical months of their release. This was provided by the law for the prevention of crime promulgated in 1908. It authorized the courts to condemn the young criminal to a period of detention of one year at least and three years at most under the Borstal system, reserving for the commission of prisons the right to release them on parole after at least six months of detention. Today about 700 young men and 90 girls are being educated in these institutions; they learn military drills, trades and industry under severe discipline; they are encouraged to complete their general education and they are given opportunities to prove that they are trustworthy. A considerable number of the young criminals who have been under this system have been able to begin an honorable life and that is an indisputable proof of its practical wisdom. Already the Borstal system has been inaugurated in India and its progress has aroused much interest on the continent.

The law for the prevention of crime was also concerned with the question of the second offense. Steady work is the only thing many criminals are afraid of and as soon as they are out of prison they commit new crimes. Society should be allowed to imprison them under a lenient discipline for an indefinite time until in order to get free they would consent to live an honorable life. But the House of Commons has fixed the limit of detention at ten years. Generally the courts impose a minimum period of ten years of detention which much be followed by five years of additional detention. The prisoners know that they will be released after eight years even if their character has not been reformed and that they have chances to be released before if they succeed in coaxing the authorities. It seems that this limit fixed by the House of Commons will impair the success of the law for the prevention of crime.

In spite of the difficulties and dangers the reform of the prisons in England progresses in a sure and constant way; difficulties, because these reforms are expensive and you cannot impose them on a community without its assent; dangers, because some reformers are inclined to try extravagant experiments which would increase rather than diminish the criminal population. They make the prisons more attractive and comfortable than the usual homes from which the greatest part of the prisoners come, and as the vagrants find that they are more comfortable in prison than in the poorhouses the prisons are quickly filled. The Commission of Prisons has tried to follow the experiments done abroad, chiefly in the United States. It has adopted its most practical innovations without imitating its extravagances. The result of this procedure has been a system which becomes more perfect as time goes on. The well trained staff concerns itself with the moral and mental development of the prisoners and tries to increase the preventive effect of the prisons. Statistics prove the effectiveness of this system; it has been found that of 100 prisoners who served their first period of detention, 70 never come back to prison and of 100 prisoners condemned to penal detention, 90 never again trespass the law.

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## PAROLE LAW IN MAINE

**Parole Law at Maine State Prison.**—"The parole law, now in execution, is a factor of distinct significance and has introduced a recognized reformatory sentiment," say the members of the board of prison and jail inspectors of Maine, Hon. Frank H. Hargraves of West Buxton, Matthew C. Morrill of Gray and Charles B. Randall of Bowdoinham, who have recently made their report.

Continuing further about the law permitting the parole of convicts in the state's prison, the inspectors say:

"To those who really want to become useful citizens the parole is an incentive for control and improvement, that they may merit its bestowal. To the recipient it carries the recommendation that he has proved himself worthy of confidence, which, and it needs no stating, is a foundation for a return to civil life.

"It is recognized that there are those who though convicted of a serious misdemeanor or crime, are not at heart criminals and would be glad at the expiration of their sentence to join the ranks of wage-earning and law-abiding citizens; but sent out, as they are, with the handicap of a prison record, and practically no money, and in the most of cases with no one to do them a good turn, the situation at once becomes serious. To those who want to 'make good' in their new start in life information and assistance at this stage would be of the greatest value and worthy of the state's interest. Without some help they may not be able to withstand the way of the least resistance and find themselves again under the ban of the law."

There are at present 178 male and eight female inmates of the state's prison; 74 were received during the year; 54 were discharged by expiration of their sentences; eight were pardoned by the governor and council; 32 were pardoned by the governor and parole committee; one parole violator was returned; one person receiving a conditional pardon was returned; four were transferred to the criminal insane hospital; and one was received from the criminal insane hospital."

Continuing the report says:

"It is the observation of your board of inspectors that conditions relating to the prisoners—their health, food, clothing and discipline—may be stated as excellent. Their housing and sanitation, while not what they should be, are made as good as circumstances will permit. The ventilation of the corridors is good and the heating comfortable. The men from their appearance and the ease with which they continue at their daily work, we judge to be of good physical standard; and the influence of the institution upon their mental and moral attitude must tend to make them better citizens when their opportunity comes.

"Under the experienced heads of the departments a good proportion of the men become interested and competent workmen, and it is a subject of surprise and complimentary to the overseers and the men, that with the changing population the quality and character of the work can be maintained.

"During the summer months the men are given the yard Saturday afternoons for out of door sports. This is greatly appreciated. The freedom from restraint and monotony of prison discipline, the healthy out of door excitement from competing sports and rival ball teams, the liberty to talk and laugh and shout, drives the pallor from their faces and makes them forget for the time the existence of a prison wall. The sentiment seems to be for an extension

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of recreation, and valuables, if any, are taken to the early date by the warden and the inspectors.

"The men are well supplied with comfortable clothing. A regulation prison suit is worn which is not, however, the conspicuous striped suit commonly worn in a large number of prisons, but a suit, one-half of which is brown and the other half black. On coming to the prison the clothes of the prisoners are changed, the outer clothing aired and if necessary thoroughly fumigated, his underclothing washed and all put away with his number and name attached. Money and valuables, if any, are taken to the office and placed in safe keeping for the day of his release, if any there be. The prisoner is given a thorough bath and then provided with underwear, stockings, shoes and a suit of prison clothes. Once each week the men go in squads of five to the commissary department, baths are taken and a suit of clean underclothing, with stockings, towels, sheets and pillowcases are given to each."—From the *Daily Commercial*, Bangor, Me., Feb. 11, 1914.

W. E. WALZ, Dean, College of Law University of Maine.

**Recommendations of the Massachusetts Prison Commissioners.**—(Jan. 1, 1914)—*Boards of Parole and Advisory Board of Pardons.*—A law was passed (chapter 829, Acts of 1913) providing for an advisory board of pardons, two boards of parole—one for the inmates of the Reformatory for Women and one for the inmates of the State Prison and Massachusetts Reformatory—and a deputy commissioner to take charge of the work of the parole agents and to perform other duties.

Under the provisions of this act the Advisory Board of Pardons and the two Boards of Parole were organized, and since July, 1913, have held frequent sessions and discharged a considerable amount of work. The sessions were held at the various institutions, and the applicants appeared in person before the respective Boards and were fully heard in their own behalf.

All persons paroled go to proper employment, and are supervised in a kindly and helpful way. \* \* \* \* \*

**Research Work at Institutions.** A diligent effort has been made to inaugurate the practice of promptly and continuously collecting all information relevant to the character, capabilities and condition (mental and physical) of all persons committed to the institutions, so that their treatment and training may be wisely ordered while they are in detention, and that their liberty may be granted them at the time and under the conditions most likely to serve their own ultimate good.

Some progress has been made in the direction indicated, but much remains to be accomplished, particularly in some of the institutions where the population is considerable, and in which there were no officials prepared for the new service by experience or training. \* \* \* \* \*

**State Control of County Prisons.** With such provision, but not otherwise, the management of the county prisons could, with the allowance of a reasonable length of time for preparation, be safely confided to the Board of Prison Commissioners, but we feel that such action should not be taken without providing that the tenure of office as masters of the houses of correction should be safeguarded to the present sheriffs, as long as they may continue in their offices as sheriffs; that they may appoint and remove their subordinates as at

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present; and that their subordinates shall be eligible to State pensions on retirement, with proper credit for the time served under county jurisdiction.

We believe, too, that if such new arrangement were effected, the sheriffs, as masters of the houses of correction, should have the right, and be charged with the duty, of informing themselves regarding the history, character, attitude and capabilities of all the prisoners in their charge, and of paroling them, with the approval of this Board, to proper employment, giving them suitable after-care, and ordering the disposition of their earnings.

If this method were adopted the State would have a considerable corps of able and earnest men in training along the lines of the best practical penology, and it would not be long before any position which might become vacant in the prison service of the State could be readily filled without delay or readjustment, and without injury to the service.

We do not suggest that the successors of the present sheriffs should become ex officio masters of the houses of correction for several reasons, one being that, if the service were satisfactory, a change in the position of master would be undesirable, even though he should cease to be sheriff, and he might be more worthy of advancement than of retirement.

*State Farm—Prison Department.* The board further recommends that, if proper working facilities are afforded, as before mentioned, the management of the State Farm, except the charge of the insane and paupers, be placed under their direction.

*Proposed Legislation.* We recommend that the principle of the indeterminate sentence, so called, be applied to all commitments for felony, excepting for murder and treason.

So many prisoners who plead guilty in court later represent that they were coerced into doing so, or induced thereto, by representations of various kinds coming from divers persons or sources, while in fact they were not guilty, that we feel that all persons placed on trial for felony should (if desired by them) have legal counsel in the conduct of their defence, or in the presentation to the court of their interests; and that the mittimus of a person pleading guilty to felony should be accompanied by a writing containing, among other things, his statement to the court of facts clearly indicating his guilt, and that when he declines to make such a statement his plea of guilty should not be accepted and he should be duly placed on trial.

We advise the removal of the two and one-half year minimum term for all prisoners in the State Prison, and the removal likewise of the provision of law that all such prisoners who have served two and one-half years with good conduct, and have completed their minimum term, shall be paroled by operation of law.

Murder in the second degree is now punishable by imprisonment for life in every case, and we believe that there are cases of murder in the second degree in which the court should have some discretion, and we therefore suggest that for that offense the court be empowered to sentence the defendant to imprisonment for life, or for any term of years not less than twenty, which is the maximum term for manslaughter.

With the changes in population of the various institutions and of the plans used and the employments followed, the inelasticity of the statute law regarding the rank and designation of the members of the staffs is a matter

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of serious inconvenience, and sometimes of substantial injury. For instance, at the women's reformatory persons designated as matrons are now employed in the following capacities, viz.: stenographers, field workers, internes, nurses, farm workers and school teacher.

We ask for authority to make the designations that seem to us to be proper, and to fix the salaries, subject to such approval as may be thought to be necessary or advisable. The maximum salary allowed matrons at the women's reformatory is insufficient to secure the employment of many likely inquirers, and prospective employes of a high type are often deterred from entering the service on that account.

We believe that the service there and elsewhere would be improved if persons of exceptional merit and value might, on the recommendation of the superintendent and the approval of the Prison Commission, receive not more than a certain percentage increase over the regular salary allowance.

The salary of the physician at the State Prison is low, and he is not required to devote all of his time to his official duties. We ask for authority to fix his compensation, and employ the entire time of a physician, or to engage an assistant physician.

An opinion by the Attorney-General seems to indicate that the Prison Commission is charged with responsibility for the accuracy of all the books of county prisons, including auditing, as relating to the industries carried on. We call attention to the fact that the Prison Commission cannot personally audit the books, and has no facilities for the employment of an auditor, and urge that this duty be placed in the hands of officials peculiarly qualified to discharge it.

We ask for full and free authority to transfer inmates from any institution under our management to any other institution under our management at any and all times, taking into account the probable ultimate good of the persons transferred and the interests of the Commonwealth.

We find that persons charged with felony, who fully and willingly admit their guilt, and who are prepared without delay to accept the judgment and sentence of the court, are nevertheless held in jail to await the action of the grand jury, and are not put on trial until an indictment is returned against them. We regard this practice as expensive, injurious and antiquated, and hope that the better way, which is employed in some of the states, may be brought about in Massachusetts without any more delay than is necessary to a compliance with legal requirements. One of the saddest consequences of the imprisonment of felons and misdemeanants alike is the hardship which sometimes comes to their dependents, who are often quite blameless, from the lack of means with which to provide themselves the necessities of life. Thus homes are broken and the members of households are scattered, and at a later time delinquents again come from such families, which, if kept together, might maintain their identity and decency.

Regardless of the humanitarian aspect of the attempted preservation of even rather poor homes, when there is some prospect that it can be accomplished, the State cannot afford to let them go to pieces, if such a result can be avoided by the expenditure of a reasonable sum of money to temporarily relieve their distress.



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The prison authorities, under proper supervision, should be authorized to extend prompt aid in case of harsh deprivation, and provision should be made for a small daily wage credit to industrious prisoners, who might thus, through their own efforts, maintain, in some degree, the relation of provider to those who have a natural right to look to them.

The segregation of defective delinquents (many of whom might be more properly termed delinquent defectives) is of grave importance. If the county prisons should be placed under State control, and the Prison Commission should be granted the power of transferring prisoners, the defectives could be placed together in the prison most suitable to their needs and capacity. If this means is not resorted to we know of no way out of the difficulty except by the establishment of another institution for their care, which method we should not propose except as a last resort.

The location of the State Prison and its physical equipment are not suitable, but we hesitate at this time to advise the purchase of land and the construction of a new congregate prison.

With the management of the county prisons and the State Farm, and the power of transfer above mentioned, the State would be in control of 26 prisons, which would manifestly be a sufficient number of institutions of that character for the use of Massachusetts. Many of them are well built, and some of them have quite an area of tillable land in connection. Some might with advantage be removed, by the sale of the present sites and the purchase of more land, to a new location, particularly those institutions which are in the settled portions of cities, as outdoor work, especially on the land, is peculiarly beneficial to many prisoners.

An extension of the hospital section of the Prison Camp and Hospital at West Rutland seems clearly to be desired, and we are submitting plans in this connection.

In case the county prisons are taken over by the State, we recommend a standing appropriation of \$15,000 per annum, to be used in the purchase of land contiguous to the various prisons, as necessity demands and opportunity offers.

We recommend the amendment of chapter 829, Acts of 1913, so as to permit the State agent, under authority of the commission, to dispense the funds of private charities to discharged prisoners during usual business hours.

We likewise advise the enactment of an act making it unlawful for any official connected with the prison service, or in a position of superiority, to urge upon any other official connected with the prison service the appointment of any particular person or persons to any position of emolument in any prison of the Commonwealth.

R. H. G.

**Report of the Penal Commission of Maryland.**—To His Excellency Phillips Lee Goldsborough, Governor of Maryland.

The Commission on Revision of Penal Laws and Prison Reforms, recently appointed by your Excellency, begs respectfully to report as follows:

It has prepared, and herewith transmits, drafts of six proposed Bills and of one Amendment to the Constitution of Maryland. Briefly summarized, they are as follows:

1st: A Bill being an Act to create an unpaid advisory board, to be known

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as the "Advisory Board of Parole," for the purpose of rendering more effective and efficient the exercise by the Governor of his constitutional power of pardon and reprieve. Under this Bill, all of the essential features of the Indeterminate Sentence system may be successfully worked out. Your Commission felt that, under the provisions of the Maryland Constitution conferring upon the Governor exclusive right of pardon and reprieve and sharply differentiating the executive, legislative and judicial functions, and forbidding the exercise by any one department of the State Government of any power belonging to any of the other departments, there was some doubt as to whether or not the parole power could constitutionally be conferred upon a Board created by act of the Legislature. It believed that the undoubted power of the Governor to issue conditional pardons, upon such terms as to him seem proper, could readily be availed of for the exercise of the parole function, provided that the Governor be given the machinery with which to advise himself as to the cases suited for parole, and should further be provided with a reasonable number of probation officers to follow up, and take care of, the cases of prisoners actually paroled. With that end in view, the proposed Bill provides for the appointment of an unpaid Advisory Board of Parole, to consist of three persons appointed by the Governor, with the advice and consent of the Senate, without regard to political affiliation. This Board is given authority to employ a Secretary and four probation officers upon reasonable salaries and to appoint as many unpaid probation officers as it might deem necessary. It is the duty of this Board, under its appropriate rules, to examine into the cases of all persons confined in the various Penal Institutions of the State, and to report to the Governor upon such cases as may seem suitable to it for conditional pardons, and to make such recommendation thereon as to it shall seem proper. Upon receipt of such recommendation, the Governor may, if to him seems meet, exercise his constitutional power to issue conditional pardons on the terms recommended by the Board, or on such terms as he may prescribe. It is believed that by this method most of the advantages claimed for the Indeterminate Sentence will be assured, and at the same time the constitutional grounds, upon which the Indeterminate Sentence laws have been attacked, are entirely avoided.

This Bill carries an annual appropriation of only ten thousand dollars.

2nd. An Amendment to Article III of the Constitution of the State, in the form of a new section, to be known as Section 60 thereof, conferring power upon the General Assembly to provide by suitable general enactment for the suspension of sentences by the Court, for any form of Indeterminate Sentences, and for the releasing upon parole of convicts, as the Legislature may hereafter approve. The purpose of submitting this Amendment is to provide a more simple and direct machinery for any form of Indeterminate Sentence which the Legislature may approve

3rd: A Bill to establish a State Board of Control to assume charge and management of the State Penitentiary and the Maryland House of Correction and to authorize, and provide not more than one hundred thousand dollars for, the erection of a prison for women, likewise to be under the control of the said Board of Control. The erection of a woman's prison will render available for male prisoners the present wing of the Maryland Penitentiary, with a capacity about one hundred and thirty-five modern cells, now devoted exclusively

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to women, but occupied by only about thirty-five inmates, resulting in a loss of about one hundred cells, which if not made available for male prisoners will at this time require an appropriation of about two hundred thousand dollars to build an addition to the Maryland Penitentiary. The same situation, to a greater or less extent, exists at the Maryland House of Correction. Therefore, your Commission believes that the present expenditure of about one hundred thousand dollars for a woman's prison to which will be removed the women convicts from both institutions, will result in an actual saving to the State of over one hundred thousand dollars. For purely technical and legal reasons, this woman's prison is to be made a branch of the House of Correction, and so designated. This Board of Control is to consist of three citizens of Maryland appointed by the Governor, without regard to political affiliation, with the advice and consent of the Senate. Their terms of office are to be for six years, with the provision for the termination of one term only at the end of each two-year period. Each member is to be paid a salary of three thousand dollars per year. Your Commission would have preferred to have provided for larger salaries than these, but did not feel justified in doing so in view of the express constitutional provision to the contrary, and of the recent judicial enforcement of such constitutional provision. It is confidently hoped that, even at this relatively low salary, the Governor may be successful in inducing the proper sort of men to accept these responsible positions.

The State Board of Prison Control shall employ, and prescribe the salaries of, a secretary, wardens, physicians and other employees, and shall succeed to all the rights, powers, duties, etc., of the Directors of the Maryland Penitentiary and the Board of Managers of the Maryland House of Correction. It shall have full power and control over the Penitentiary, House of Correction and House of Correction, Woman's Branch. It shall succeed to the title to, and ownership of, all of the property of all of these institutions. It shall be given power and authority to establish and maintain a system of labor for prisoners to supersede the present system of contract labor. It is given plenary powers with respect to the nature and character of such system of labor, but is directed to provide, wherever expedient, such form of labor as will offer an opportunity to prisoners to earn a surplus over the cost of their maintenance to the State.

It is further provided that all sentence of imprisonment hereafter imposed, exceeding six months, in the case of males, shall be to the Maryland House of Correction or the Maryland Penitentiary. The county and city jails are to be reserved for the cases of those sentenced for less than six months. After the establishment of the House of Correction, woman's branch, all women sentenced for a greater term than one month shall be sent to that branch, and only those sentenced for a less term than one month shall be sent to the county and city jails. Provision is made for the transfer, under proper circumstances, from the House of Correction to the penitentiary and *vice versa*, of any person hereafter committed to one or the other of the said institutions. The superintendent of the woman's branch is required to be a woman.

For the maintenance of the three institutions the sum of seventy-five thousand dollars annually, or so much thereof as may be necessary, is appropriated. This amount was agreed upon after careful consideration of the expense of the management of the penitentiary and the house of correction, and of the proper cost to maintain the woman's branch in the future, and, of course, takes into

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consideration the revenue expected to be derived from the proper employment of the prisoners. At the present time there is a deficit at the Maryland House of Correction of about thirty-six thousand dollars.

To your commission was also referred the work of revising the criminal laws of Maryland. The limited time at its disposal had necessarily to be devoted almost exclusively to the consideration of the many problems involved in the preparation of the State Board of Control Bill and the Advisory Board of Parole Bill. Moreover, we were not unmindful of the fact that Chapter 325 of the Acts of 1908 provided for the appointment of a commission to "revise, make harmonious and rearrange systematically the criminal statutes now in force in Maryland." We have had the work of that commission before us. We recommend whatever appropriation may be necessary to complete the work of that commission and to publish its report, but in view of the fact that Mr. George P. Bagby, of the Baltimore Bar, expects to publish in the summer of 1914 an Annotated Codification of Article 27 of the Code of Public General Laws, including the criminal laws passed at the pending session, we have not thought it wise or expedient at this late date to undertake any comprehensive measures looking to the general revision of the penal laws.

Your commission would also recommend the operation of a penal farm in connection with either the Maryland Penitentiary or the House of Correction. Owing to the fact that the bills that we have prepared already call for a large outlay of money, we have not embodied this recommendation in the bills prepared by us. We strongly favor, however, the establishment of such a farm, and would be most happy to see this recommendation adopted by the general assembly. The farm, if established, ought, of course, to be under the control of the Board of Prison Control. In connection with this recommendation, we desire to call attention to the fact that the state owns at the House of Correction some three hundred acres of land, which might well be employed for experimental purposes, at least, with a view to the future establishment of a large penal farm.

Your commission was likewise anxious to recommend the making of suitable provision for the care of the criminal insane, of whom there are probably forty or fifty in the state, and for whose care, at the present time, no adequate provision has been made. The same question of the necessary financial outlay involved deters your commission from making actual provision for this much-needed reform.

Your commission concurs heartily in the recommendation contained in the annual report of the Maryland Penitentiary for 1913 (page 7), for the establishment of a tuberculosis hospital for prisoners. It respectfully suggests to the Board of Prison Control the establishment of such a hospital upon the lands of the House of Correction.

Four additional bills have been prepared by your commission, as follows:

4th: A bill providing for the indictment and trial of persons in the counties during terms of court where there is now no grand jury or petit jury. The object of this bill is to prevent the injustice of detaining persons unreasonable lengths of time in jail awaiting indictment and trial.

5th: A bill providing that no judgment shall be set aside or reversed or new trial granted in any criminal case, unless the court, after an examin-

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ation of the entire case, shall find affirmatively that the error complained of has resulted in a miscarriage of justice.

6th: A bill providing for the issue of a summons or notice in criminal cases of which a justice of the peace, police justice, or other similar official has jurisdiction, in lieu of a formal warrant, in the discretion of such justice of the peace, etc.

These three bills have been approved by your commission.

7th: A bill permitting the amendment of indictments in criminal cases, in the discretion of the court. While your commission approves the principle of this bill, several of its members are not completely satisfied as to its constitutionality.

Mr. F. Neale Parke desires that it should be here stated that he does not approve of the principle of the indeterminate sentence or of the purchase of a penal farm.

Respectfully submitted on behalf of the commission.

February 16th, 1914.

ELI FRANK,  
*Chairman.*  
From E. O. DUNNE,  
Baltimore.

**The Need of a Federal Office of Prisons.**—The following is extracted from an address recently made by Dr. E. Stagg Whitin, until recently chairman of the National Committee on Prison Labor: [Ed.]

"A case now pending before the Supreme Court of Rhode Island is of fundamental significance from the point of view of the rights of the convict, and it should pave the way for federal action. Rhode Island in the early forties, without exception, prohibited slavery in its Constitution, making no mention of the slave status as a punishment for crime. A former convict, Anderson by name, sues the business interests to whom his services were let by the state for wage, in payment for his services. It is contended that while in prison he was a ward of the state under instruction; that the business interests profited by his services, and as by the Constitution of the state he could not be in slavery, he asks the reward for his toil for the benefit of an aged mother and others dependent upon him.

"Slavery with its exploitation has seen the only alternative; for the deprivation of liberty there has grown up a new concept of control whether it be over the child, the feeble-minded, the insane or the delinquent: a control for the benefit of the individual controlled—a control for his education, for his cure, for the insuring of his happiness. Modern education with its psychological study of the power of interest has pointed a new opportunity; the brutality of the old school system, the torture of the insane must give place. The ward of the state, whether child, insane or criminal should stand in a new relation. The parent-right, whether exercised by a natural parent or by the state, may limit the boundaries of the ward's activities for the ward's own good and the good of society in which afterward he is to take his place. Neither the parent nor the state any longer has the right to exploit the child or the convict or the insane to their detriment. \* \* \* \*

"When government fails, voluntary associations come into existence to do in part the work left undone by government. The National Committee on Prison Labor has had as its task for several years now the standardization of

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penal practices and the development of functioning industrial groups interchanging their products and tending towards self-maintenance. Whether on the farm, in the road camp, the productive trade-school or state work-shop, by new efficiency, new incentives through wage, new hope through personal encouragement, there must be shaped along scientific lines a refinery for the dregs of society. The national incorporation of this committee under the bill introduced by Senator O'Gorman and now before congress will do little more than give expression to what is already a reality; still it is hoped that the better recognition by congress of the constructive possibilities in this problem will make clearer the need of legislation contemplated by the National Committee on Prison Labor and will lead indirectly at least to congressional participation in the work of amelioration of the condition of this lowest strata of society.

"Since the report of the Industrial Commission of 1900, congress has had before it bills for the restriction by indirect method of the evils resulting from the contracting-out of the prison population. Their failure of passage has been partly due to their dissociation from any constructive scheme of betterment of prison conditions. In its present form the bill known as the Booher-Hughes Bill, which will terminate the vicious contract system, because combining as it does with legislation in the states themselves, it will destroy the profitable nature of this form of convict exploitation.

The Attorney General, under several administrations, has asked for a commission to study jail and other penal conditions. I need not point out to the woman's department of the National Civic Federation the success of the only one of these commissions which was duly constituted and which did such good work with the help of Mrs. J. Ellen Foster, Miss Maude Wetmore, Miss Helen Varick Boswell and others. The bill for a nation-wide work, based on the same principles as the work done by your district commission, is still pending before congress. The commission must show the need of reorganization of the work of supervision over our national prisons to meet adequately the tremendous growth in that quarter during the last few years.

"The passage of this legislation cannot fail to bring to the fore, not only the facts as to the present conditions but the need for drawing into the movements for penal reform, many of the agencies under the control of congress. The development of penal farm colonies must have the support of the Department of Agriculture; the development of the convict road camp must have the aid of the Office of Public Roads; and, more directly under the Department of Interior, the great public works, whether irrigation or water-ways, must afford opportunity for development in connection with the penal system. Federal aid, restricted we shall hope by all safeguards which Senator Borah has so cleverly worked out in his road bill at present before congress, will find in the newly developing convict system a method of double helpfulness in that the opportunities presented for convict labor will make imperative a more scientific and more definitely organized local state department to handle and be responsible for the development of public works, whether the federal aid be given on highways construction, the preservation of forest reserves, or industrial institutions, and it is to be hoped that it will be made possible for use in all these directions. From the national government, city, county or state, officials should be able to secure information and recommendation as to the most approved methods, while in the great training schools which the govern-

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ment is conducting the future Colonel Goethals should be called upon to aid with their training in scientific engineering.

"How long voluntary associations like the National Committee on Prison Labor and the National Civic Federation must act as centers for standardization in broad national ways of local penal agencies and provide for their inclusion in the big constructive development which the national government is undertaking remain to be seen, but certain it is that a government which can build the Panama Canal and change in a few years the whole life of the Philippine Islands will not hesitate to assume the responsibility."

E. STAGG WHITIN, Columbia University.

**Work of the Massachusetts Board of Parole.**—When a young man or a boy comes up before the state board of parole for examination as to his merits regarding possible release from imprisonment in the Concord reformatory, a question frequently asked of him is, "What is your reason for thinking that you should be let out?" With an approach to unanimity that is almost startling comes the answer, "Well, I think I have been punished enough!" But nowadays the conviction is being borne in upon them that they are there to learn, rather than to be punished. And this idea that correction of waywardness and education along lines adapted to the boy's special needs and capabilities must be always kept in mind, is the mainspring of action in the parole board's system of work.

The board of parole, headed by Frank I. Randall of the prison commission, includes the following members: Deputy Prison Commissioner John B. Heberd, Warren F. Spalding, Benjamin L. Young and Thomas C. O'Brien. The commissioner and deputy commissioner are members ex-officiis. The other three members are appointed by the Governor for terms of three years. This board has in its membership three lawyers (one of them a man of long experience in dealing with penal affairs), a school man and a man who has spent his whole life in the work of prison reform. The board has charge of parole matters at the Massachusetts reformatory and the state prison, and acts as an advisory board of pardons for the Governor. There is another board of parole composed of the chairman and the two women members of the prison commission, and this board does the parole work at the reformatory for women at Sherborn.

A primary fact to be noted in considering our penal system is the difference between parole and probation. To many minds the difference, both in theory and practice, is probably somewhat vague. On this point Deputy Commissioner Heberd is well qualified to speak. Mr. Heberd says:

"The problems connected with probation and those connected with parole are vitally different. The first difference is in the type of person to be dealt with. Many on probation from the court are first offenders and persons with no criminal history or criminal intent. They have made mistakes or have fallen into bad company and as a result have found themselves summoned before the court. Many of them come from the homes of the well-to-do, have had a decent family training, and after being placed on probation once, never again appear before the court.

"In parole work, however, because of the extent to which probation is used, an entirely different type of person is the rule rather than the exception. Those in our reformatories and prisons today have gone through the processes of probation, suspended sentence and the like, and have worn out all the

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methods of dealing with young men without confining them within the walls of an institution.

"Institutions for delinquents have been added in our state from time to time, and at present in most other states there are institutions which are similar to ours. Those in Massachusetts are as follows:

Name of Institution.	Age.
Disciplinary classes (day truant schools).....	Under 14
County training schools (truant schools).....	Under 16
Lyman School for Boys.....	Under 15
Industrial School for Boys at Shirley.....	Under 18
Mass. Reformatory	} .....No age limit
Houses of Correction	
State Farm	
State Prison	

"These institutions stand as life savers along the line of human activity. The one object of their existence is prevention. It is found that the more elaborate and extensive an organization is, the more difficult it is to get proportionate results. This has been clearly shown in the orphan asylums and in in foundling hospitals where death rates are extended as high as 95 per cent. In prisons, reformatories and the like, a person not only became institutionalized but often he was branded as a criminal with a serious handicap to live down. Homes were closed to him, employers were afraid to receive him and society shunned him. The cause of these evils is ascribed to the unnatural life led by the inmates. To avoid these evils there has developed in recent years the idea of reforming the person without confining him in an institution, but allowing him to have his freedom and be subject to the influence of a good home and helpful friends. When this liberty precedes confinement in an institution, we call it probation; but when it follows confinement, parole.

"A man who is placed on parole from an institution is given an opportunity to serve a part of his sentence outside the walls of the institution. It is a gradual release from supervision and oversight. It is the convalescent stage. While a man is confined in a reformatory or prison, he is living in an unnatural world; in an abnormal environment surrounded by iron bars and strong walls, and guarded in all his sleeping and waking hours. He leads the life of a dependent and after several years of such existence it is the exceptional person who does not lose his initiative and become helpless."

When asked as to the relation between parole and probation, Mr. Hebbard said:

"Each is a scheme whereby a man is given an opportunity to correct his errors and lead a law-abiding life outside the walls of an institution rather than within. Secondly, each scheme suggests supervision in the way of a probation officer or a parole officer. Thirdly, each requires some arrangement of reporting in order that those charged with responsibility may know the whereabouts and behavior of the individual on parole or probation. Fourthly, each should encourage the idea of making restitution to those from whom property has been stolen and repairing damages which have been done. Fifthly, the success of each depends upon the real personal touch and influence of some noble-minded and big-hearted individual.

"The matter of dealing with restitution is quite different with those on parole from what it is with those on probation. Many persons, if they are



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placed on probation, are willing to make restitution to a very great sum in order that they may avoid going to prison, but after a man has served a term in the prison or reformatory and is told that one of the conditions of his parole is that he must make restitution, he feels that he is treated unjustly. The old idea of punishment lurks in his mind and he feels that by being confined for a period of years, he has paid whatever he owed to society, and that to require him to "make good" for the property stolen is to make him pay again and is therefore unjust.

"Applicants for parole are often weak-minded, feeble-minded, half-insane. Their home conditions are of the poorest and their training for any definite work in life is very meagre. For these reasons it is much more difficult to deal with them and to do the fair thing to them and to society. Because of this great difference in the type of persons to be dealt with in parole work the supervision must be more careful and painstaking. Stricter rules of conduct are required and strenuous effort must be made to prevent those on parole from giving up work and absconding."

All the meetings of the board are held at the institution in which the applicant is confined. Before the board considers any application for parole, an attempt is made to learn all the facts possible concerning the boy. The institution furnishes certain material, mostly on the prosecution side, and agents of the prison commission act as investigators to learn of the home conditions and to look up the employment. When all the information has been collected, duplicate copies are made and the board goes to the institution to interview the different applicants. At these meetings the warden or superintendent, the doctor and the chaplain are expected to be present and to supply information. The boy appears before the board privately and is asked such questions as seem important to the members. The boy is then asked to retire and after again discussing his case the board votes either to parole him or to postpone his parole. Some of the things which influence the board in deciding upon a parole are the following:

1. Has the boy the right kind of home to which he may go? Has he any relatives or friends who are willing to help him re-establish himself in the world? If he has a home, is it the right sort? Are the influences there of the best? Is it an environment in which he can "make good" or are there temptations which may cause him to do again the thing for which he was committed?
2. Is there anyone who will give him definite, permanent employment of the proper sort, which will enable him to pay his expenses and have a little left with which to make restitution in cases where it is required? A bank account is encouraged.
3. What has been the effect of confining the boy? Has he taken advantage of any opportunities to improve himself in the way of education? Has he tried to learn a trade or a part of a trade? Has he attended the school connected with the institution? Has he made proper use of the library? Has he improved in health? What is his attitude toward his wrong doing and his chance to begin over again?

A good many who become eligible for parole are not paroled; of those at the state prison only 51 per cent have been paroled, and at the reformatory 70 per cent. This shows, therefore, that many applications for release on parole

## MASSACHUSETTS BOARD OF PAROLE

are postponed indefinitely or denied absolutely. These postponements in every case are, in the opinion of the board, the best thing for the applicant.

At the present time, paroles are refused certain persons for the reason that there is no proper institution in which they should be confined and the board of parole will not assume the responsibility of allowing them to be at liberty with the chance of committing the same offense again within a short time after their release. These are the distinctly feeble-minded, and they present a problem not only to the board of parole, but to the institution in which they are confined. Then there are perverts of various kinds who are in the prison and reformatory in considerable numbers, and whose presence in the community means danger and alarm. The following figures show the percentage of those paroled after interviews:

### FROM THE CONCORD REFORMATORY.

Interviewed.....243	Paroled.....175	Returned.....19
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### FROM THE STATE PRISON.

Interviewed.....116	Paroled..... 60	Returned..... 2
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These figures are from Aug. 1, 1913, to Jan. 1, 1914:

The following items indicate some general principles which the board is trying to establish: 1. restitution; 2. education; applicants for parole must know enough English to get along in the world; 3. religious duties; 4. use of libraries; 5. evening schools; 6. never parole a man you don't know; 7. never parole a man who is estranged from his family, who does not want his family to know where he is; 8. never parole a man without definite employment; 9. never parole a man without some person to supervise him; 10. be very slow about paroling a man who has served two or three terms in prison; 11. never parole a man who will not tell the truth about his offense, who does not want to talk about it; 12. do not parole a man who has warrants awaiting him, until after some investigation has been made.

Other states have had boards of parole much longer than has Massachusetts. Mr. Heberd says: "It was my privilege to visit a number of the institutions in the middle west and to talk not only with the members of the boards of parole, but with the agents who actually carried out the work. In some states the parole board is smaller than ours and meets much less frequently. I have in mind one state in which the parole board meets only four times a year. Our law requires that we see every applicant for parole. Other states parole men without seeing them and without any very definite investigation.

The states in the middle west are all enthusiastic over the success of their systems. Some states go so far as to claim that between 90 and 95 per cent of the persons placed on parole are successes, others limit it to 75 per cent. These percentages, however, mean absolutely nothing. First, because it depends on what is meant by success. Secondly, the period of time which a person serves on parole in some states is as short as six months and in others as long as several years. Thirdly, it depends upon the kind of supervision and the standard which is set by those who supervise the work. If the system is efficiently run, if a high standard is demanded, if painstaking supervision is had, there will be many persons returned to the institution for violating their parole, and that state would be charged up with a high percentage of failures. In another state where there is practically no supervision and no definite

## AUSTRIAN CRIMINAL STATISTICS

standard set, a high percentage of success would be recorded and it would be advertised at every opportunity that came.

"Until we have a definite understanding and a definite basis on which to reckon our work it will be difficult for us to compare successes and failures. One great cause for failure in the work is the fact that a single parole officer has a large number of men to supervise and his visits are, therefore, separated by long intervals of time. A person has many opportunities to get into trouble and even to slip away without the knowledge of the officer.

"Here, then, is a great field for volunteer parole officers. Every community should have some high-minded and public-spirited person who has the time and is willing to supervise in a very personal way some few individuals on parole. We are looking forward to the time when every man released from the reformatory or the prison will be put under the direct charge and supervision of some one person, and when that time comes our batting average will be pretty nearly perfect.

"Organizations of this sort can help greatly in this way and in the matter of employment. A great many persons do not wish to employ men on parole from correctional institutions, but these men must come out sometimes, and is it not better to have them released when they can be held to a high standard of accountability and when there are many strings with which to hold them?"

The present board of parole was provided for by an act of the last legislature and was organized July 31, 1913. Before this time, however, men had been paroled from the state prison under the law of 1911, which allowed a man to be eligible for parole after serving two-thirds of his minimum sentence, provided the two-thirds was more than two and one-half years and he had had no "punishments." At the Massachusetts reformatory, where boys are sent on indeterminate sentences, they became eligible for parole according to the rules of the institution after serving a certain number of months. The parole work, however, was very superficial. No careful investigations were made concerning the home conditions into which the boys were to go, or the employment which they were to have. At the present time there are 1,058 boys on parole from the reformatory whose whereabouts are unknown; and out of 191 men paroled from the prison only 74 can be located. All this came about before the organization of the present board of parole.

H. S. KEMPTON, in Boston Transcript, Feb. 25, 1914.

### STATISTICS.

**Austrian Criminal Statistics for 1909.**—The most striking feature about these figures is the increasing tendency towards acquittals and to short prison sentences. Professor Löffler shows that from 1876-1909 the acquittals in trials by judges increased from 13.1 per cent to 16.8 per cent; but during the same period, trials by jury raised the percentage of acquittals from 24.8 to 30.6. Or put another way, during the period 1876-1909 juries decreased the actual number of verdicts of guilty from 2,940 to 2,146, a decrease of about 27 per cent, while in the same period the population of Austria had increased about 30 per cent. Verdicts of murder, for example dropped from an average of 191.3 for the period 1876-1880 to 62 for the year 1909. But does this indicate a genuine decrease in the actual prevalence of murder? Not at all; indirect proof of this may be derived from the fact that convictions for manslaughter rose during this period from an average of 245.7 to 261 in 1909;

## PRUSSIAN PRISON STATISTICS

while convictions for serious bodily injury rose from 4,141 to 5,278. Professor Löffler attributes the apparent judicial inefficiency to "the rout of the state's attorney's office by the jury courts," and argues for increased repression of crime through more rigorous sentences.

While we may differ from him as to the motives for eliminating the short jail sentences, there seems to be no question but that the Austrian practice (like that of our own police courts) is a travesty upon the whole principle of imprisonment as a means of correction or punishment. For instance, the sentences for terms of one year and over decreased from 8.91 per cent in 1907 to 8.56 per cent in 1908, and to 7.99 per cent in 1909. Those for from 6 to 12 months decreased from 8.60 per cent in 1907 to 8.21 per cent in 1909. Those from 3 to 6 months also declined slightly. But those from 1 to 3 months increased from 34.79 per cent in 1907 to 35.59 per cent in 1909. And sentences of less than a month rose from 27.86 per cent in 1907 to 29.12 per cent in 1909. All of this might be much better taken as an argument for changing the punitive system in so far as it relies so largely upon jail terms. There may be an alternative to the proposal for increasing the severity of prison sentences. That alternative might well be the indeterminate sentence, or it might be a more liberal use of conditional liberation and probation. Neither of these seems to have occurred to Professor Löffler. (*Die österreichische Kriminalstatistik für 1909*, in *Oesterreichische Zeitschrift für Strafrecht*, 1 and 2 Heft., 1913).

A. J. TODD, University of Illinois.

**Prussian Prison Statistics.**—(*Statistik über die Gefangnisse der Justisverwaltung in Preussen für das Rechnungsjahre, 1912*. Berlin, 1913.)

The administration of prisoners in Prussia is divided between the Ministry of Justice and the Ministry of the Interior. The daily average of prisoners in 1912 was 52,795 persons, or 131.44 to 100,000 of the population. A list of all officers is given. An agency said to be approved by experience is the Commission of Supervision; composed of a chairman selected by the Minister of Justice, one or two judicial officials, a state's attorney, a prison warden, a chaplain, a physician, and, in some cases, a member of the prisoners' aid society. Short courses of study are held for instructing officers in their duties. The total number of male prisoners in 1890-1 was 328,835, of women, 100,537; in 1912, 339,125 males and 62,322 females. The average number of juvenile convicts in 1899 was 1,562.42; in 1912, 392.95; the decrease being due to increased use of suspension of punishment—3,379 youths in 1899, 13,823 in 1912. Cellular incarceration by day and night was applied to 11,813 persons in 1895-6, and to 21,208 in 1912; the tendency is to keep prisoners from contact with each other, at least for a part of the term. The "provisional release" is more used by the authorities than formerly; in 1912 there were 385 applications, of which 53.51 per cent were approved; in 1912, 562 applications, of which 76 per cent were approved. The aid societies receive subsidies from the state.

The text of the administrative regulations laid down by the Federal Council in 1897 is reproduced in this report. Professor Freudenthal regards them as important.

C. R. H.

## COMMITTEES OF THE INSTITUTE

**Increase of Crime in California.**—Claims that a recent wave of crime in California was caused by paroled prisoners, the state parole officer has proven unfounded. Out of several hundred crimes committed, only one paroled prisoner was involved and he is only on suspicion. Out of a total state prison population of 3115 on January 1, 1914, there are 647 prisoners on parole, 52 of whom were paroled in December, 1913. Of all these only 32 are out of work, 16 of whom are sick. Since the parole law was adopted in California in 1893, there have been 2533 prisoners paroled, of which number only 74 have been returned to prison for committing new crimes. Others have been returned for violating the rules of their parole. Since the passage of the parole law in California, paroled men have earned \$1,407,261.18, of which sum they have saved \$344,751.67. Many have fulfilled the term of their sentence or have been pardoned by the Governor and have gone on earning good wages, which while not included in the above amount, can readily be called money earned by men paroled from prison.

Criticism of the probation system in California cities has been very sharp on account of several serious crimes committed and there are some who are in favor of giving up reformative measures to return to the old retributive system. To such persons we are anxious to show the results of probation in San Francisco during the year ending December 31, 1913.

There are in San Francisco a total of 912 persons on probation, of whom 306 were probationed by the courts during the year 1913. The wage earning capacity of the probationers during the past year is shown by their total earnings of \$149,674.00. Money to reimburse persons who lost through the criminal acts of the probationers was collected in many cases. Nearly \$20,000 were collected from employers of probationers and applied to the support of defendants. These figures cover only the adult probationers.

W. I. DAY, Oakland, Cal.

## MISCELLANEOUS.

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Dr. E. Stagg Whitin, 130 East 22nd St., New York City.

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Adelbert Moot, Esq., Buffalo, New York (no reply received).

Hon. Stephen H. Allen, Topeka, Kansas.

Professor W. W. Hitchler, Dickinson School of Law, Carlisle, Pa.

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Robert H. Marr, chairman, Criminal Code Commission, 609 Hennen Bldg., New Orleans, La.

Nathan William MacChesney, 30 N. La Salle St., Chicago.

A. Bullard, care of the MacMillan Co., 64-66 Fifth Ave., New York City.

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Representatives of Other Organizations.

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**Prison Products Begging for Purchasers in New York.**—Many county, city and village officials are ignoring the prison law which requires municipalities to purchase necessary goods and materials manufactured in the prisons from the Superintendent of State Prisons, according to a statement made on January 2 by the State Commission of Prisons. If the convicts in the state prisons are to be kept employed as contemplated by the constitution, the public officials of the state and of its political divisions, the commission asserts, must purchase the prison products.



## PRISON PRODUCTS BEGGING FOR PURCHASERS

"The constitution," says the commission, "makes it the duty of the legislature to provide employment for the convicts and declares that the products of prison labor shall be sold only to the state or its political divisions. In order to compete as little as possible with free labor the prison industries have been diversified under assignments by the State Commission of Prisons.

"The State Board of Classification, composed of the Fiscal Supervisor of State Charities, the State Commission of Prisons, the Superintendent of State Prisons, and the State Hospital Commission, fixes the styles, patterns, designs, qualities and prices of all prison-made products, and the prison law provides that no article so manufactured shall be purchased from any other source for the state, its public institutions or political divisions, unless the State Commission of Prisons shall certify that the article cannot be furnished. To audit or pay for goods purchased without such certificate is illegal. The State Board of Classification endeavors to fix prices as near the usual market price for such goods as possible.

"State officials generally observe the law, as the state comptroller refuses payment if the bills for articles of a kind manufactured in the prisons are unaccompanied by the proper certificate of release. There is, however, an apparent disposition on the part of many public officials to evade the law. The records of the Superintendent of State Prisons show that up to December 1st the cities of Lackawanna, Newburgh, North Tonawanda, Port Jervis, Tonawanda, Watertown and Watervliet had made no purchases since the enactment of the present law in 1896. With the exception of a straight jacket, purchased in 1912, the city of Glens Falls had bought nothing. No purchases had been made by the cities of Oneida since 1901, Cortland since 1905, Geneva since 1908, Fulton since 1909, Kingston since 1910, Ithaca, Jamestown and Rochester since 1911, and Hudson, Little Falls, Niagara Falls, Oswego and Poughkeepsie since 1912. Cortland, Franklin and Fulton counties had sent in no requisitions for 1913 prior to December 1st.

"Of the 466 incorporated villages of the state, only 15 had made purchases during the same period. These were Addison, Baldwinsville, Briarcliff Manor, Dannemora, Ellicottville, Fonda, Green Island, Gouverneur, Haverstraw, Hoosick Falls, Nyack, Ossining, Peekskill, St. Regis Falls, and White Plains.

"School authorities in some of the municipalities mentioned have purchased school furniture and supplies.

"New York City affords the largest market for prison products. Buffalo makes some purchases from the state as well as from the Erie County Penitentiary, but Rochester's last order for supplies from the state prisons was in May, 1911.

"Of the second class cities, Albany, Troy, Yonkers and Schenectady buy liberally, but orders from Utica and Syracuse are few.

"Rochester and Monroe County officials hold that the Rochester city charter and the Monroe County purchasing act enacted in 1907, which require that contracts for city and county supplies be awarded to the lowest bidder, in effect nullified the provisions of the Prison Law of 1896.

"In response to an inquiry from the State Commission of Prisons, Attorney-General Carmody on August 28, 1913, rendered an opinion to the effect that the local statutes relative to the purchase of supplies in the city of Rochester and

## PRISON PRODUCTS BEGGING FOR PURCHASERS

in the county of Monroe do not supersede in those municipalities the prison law requiring municipalities to purchase necessary goods and materials which are manufactured in the prisons of the state. The attorney-general's opinion says in part:

"The charters of the other cities of the state contain substantially the same provisions as to the awarding of contracts for supplies above a certain minimum cost, after competitive bidding, to the lowest bidder. The second class cities law has a general provision to this effect applicable to all cities of that class.

"The purpose of these various enactments is to prevent the waste of public funds through dealings by public officers with favorite contractors and supply agents. It is not possible that the legislature intended to exclude these very important municipalities from the general provisions of the prison law, enacted in pursuance of a public policy to give employment to prison inmates, from which there is no logical reason for excepting any of the political subdivisions of the state. I think these statutes can be fairly construed together, and, so far as goods manufactured in prisons are concerned, they must be purchased by the municipalities whose special charters or the general laws applicable thereto require competitive bidding. As to supplies which may be purchased from the prisons, these provisions have no application.

"As to general supplies purchasable from individuals the provisions as competitive bidding are applicable.

"But such provisions have no application to prison made goods available for use by the political subdivisions of the state."

"The corporation counsel of Buffalo had previously contended that the prison law, so far as it compelled municipalities to purchase products of the prisons, was unconstitutional, but the attorney-general held otherwise.

"As a result of the failure of many municipalities to observe the law, hundreds of convicts in the state prisons have been idle during the past year. The prison storehouses are stocked with goods for which the demand has not kept pace with the supply. Co-operation and observance of law on the part of public officials in the purchase of prison-made goods would go a long way toward making the prisons self-supporting.

"There is no doubt that strict compliance with the law by all public officials would create a demand much more than enough to keep all the prisoners throughout the state fully employed. This result is greatly to be desired.

"The prison law requires state, county, city and village authorities to furnish the State Commission of Prisons annually on or before October 1st an estimate of prison-made goods necessary to be purchased during the ensuing year. These estimates are intended as an aid to the superintendent of state prisons in the conduct of the prison industries. Many officials are lax in furnishing these estimates, ignoring repeated requests from the commission to comply with the law. Others send in their estimates but make no purchases, while a few admit, in response to inquiries, that they buy supplies in the open market which might have been furnished by the prisons, in violation of law.

"So far as possible the commission has endeavored to acquaint the responsible officials with the provisions of the law, willful violation of which is punishable as a misdemeanor."

From the New York State Commission of Prisons.

## REVIEWS AND CRITICISMS.

DIE PSYCHOLOGIE DES VERBRECHENS; EINE KRITIK. Von Dr. Med. u. phil. *Max Kauffman*. Julius Springer, Berlin, 1912. Pp. 344, M. 10.

In his *Vorwort*, the author of this volume expresses the belief that erroneous conceptions concerning crime and its causes are traceable in a large measure to the fact that it has not been made clear where and by what means we should study crime. He therefore proposes to discuss, in this book, the methods of investigation in this field and to point out the numerous sources of error which beset the student of crime. But before he launches out upon this program he devotes thirty-seven pages of the text to a brief discussion of a number of concepts which are frequently employed in the course of the work. Among these are the following: Will, motive, heredity, degeneracy, moral insanity, inborn egoism of the child, etc.

Following this are sixty pages devoted to the discussion and criticism of various sources of information. The prison physician and the psychiatrist; the intelligence test and laboratory experiment; the physiognomy and the lies of criminals; statistics and its sources of error; all these are among the topics that are brought forward in this portion of the text. No one source alone is adequate to afford a knowledge of the individual criminal. The psychiatrist and the prison physician are especially liable to the errors of analogy. Mental tests and laboratory experiments are inadequate for the purpose for which they are intended, because many criminals are the victims of weak wills and love of ease, and these are qualities that scientific tests do not themselves reveal. Furthermore, in the reviewer's opinion, the author makes a strong point when he urges that laboratory experiments, intelligence tests and other mental tests applied to delinquents behind the bars are likely to be misleading because there the criminal is not at his best; he is constrained, depressed and uncertain. To compensate for these and other shortcomings of the sources under discussion, the investigator is driven by necessity to mingling with delinquents in freedom and to observing them in such a situation throughout a considerable period of time. Dr. Kauffman has consistently pursued this method. In the volume under review he now and then refers to his stenographic notes, that were made when he was thus conducting his work, and quotes from them, *e. g.*, p. 92, where he quotes a stereotyped phrase from the conversation of criminals which recurred many hundreds of times in his notes. This phrase was to the effect that the delinquent had not thought about the nature and possible outcome of his criminal acts; that is was "all his own fault," etc.

In the second division of the text the author discusses criminal types in the space of 112 pages. One who has learned to know criminals in all situations, he believes, can, without doing violence to the facts, classify them according to two principles as the vagrant and the

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energetic type. In connection with his description of the first type he discusses the psychology of work; the mental, physical and social characteristics of the vagrant and the prostitute; the alcoholic criminal; the criminal by opportunity and the kleptomaniac. Throughout this section the author makes use of the results of statistical and laboratory investigations. He believes that we are not justified on the basis of intelligence tests in drawing the conclusion that the manner of life of the prostitute can be traced either to inborn mental weakness or to acquired weakness of intelligence. (*Intelligenzschwache*, p. 129.)

The second type of criminal includes the robber, the thief, the impostor, the gentleman swindler and the juvenile criminal. That such delinquents on the whole are inferior in intelligence to the groups in which they belong, Dr. Kauffman believes, is wholly untenable.

There is more or less transition from one type to another. It not infrequently happens that at the fortieth or fiftieth year of age the vagrant becomes energetic or vice versa.

Finally, in this part, the author discusses a certain atypical group, among whom are murderers. He believes that murder is usually incidental to the commission of other crimes, excepting in those cases in which the act is done by the insane.

In the third portion of the text Dr. Kauffman treats the causes of crime. There are individual causes such as the social impulse, improvidence, weakness of will, juvenile mentality, neurasthenia, alcoholism. On the other hand, there are social causes. The effects of education and culture even punishment may be a cause of crime (p. 250) in as much as, if it is improperly chosen and administered, its psychological effect may be, not to awaken ideals of good conduct, nor to renew allegiance to ideals, but to embitter the spirit of the one who endures the punishment.

In the last section, fifty pages are devoted to the discussion of the prevention of crime, including the psychology of punishment.

In the final section the author discusses the penal law in the course of 75 pages, the prevention of crime, and the reform of the administration of punishment. He has little faith in the indeterminate sentence, for how can any one determine that a convict who is under the rigid restraint of a prison, where he is not permitted even moderate freedom of self-expression, either is or is not fit to enjoy the freedom of normal life? At this point Dr. Kauffman does not appear to realize what seems to many of us to be the fact that the difficulty in this instance can be obviated by administrative means. Give a prisoner the limited freedom of the outdoor prison farm and the still greater freedom of the honor squad if possible. In such situations it should be possible to determine exactly whether he has become fit for normal social life or not.

Northwestern University.

ROBERT H. GAULT.

## REVIEWS AND CRITICISMS

ADOLF MERKEL. *DIE LEHRE VON VERBRECHEN UND STRAFE*. Edited by *M. Liepmann*. F. Enke, Stuttgart, 1912. Pp. XLII+371.

This book takes the place of the second edition of the late A. Merkel's Textbook of Criminal Law, which is out of print for some time. The title of the original book is a trifle misleading, since it is not so much a textbook to be used by the student in connection with a lecture course, as a critique of the fundamental notions of criminal law. The existing German law is taken as a context for developing a general doctrine of crime and punishment. Merkel's views have made themselves felt very widely, particularly by the change of front in regard to some vital points in the doctrine of Liszt's school. The larger part of the program of reforms advocated by Liszt—individual treatment of the criminals, importance of studying the causes and conditions of crime, necessity to combine educational preventive measures with imprisonment—are more or less generally recognized by criminologists, but this does not mean a victory of their theoretical basis. Two propositions may be regarded as essential for an idealistic conception of criminal law: first that criminal responsibility cannot exist without freedom of the will, and second that punishment has an absolute value of its own without reference to its useful effects for the future. Anthropology and sociology teach us to regard crime as a necessary result of existing conditions, wherein anthropology naturally emphasizes the necessity of reactions for a given character, while sociology accentuates the influence of existing social conditions on forming a character and provoking responses from it. Both sciences have made us familiar with the idea that will actions are causally determined, and the question arises whether we also have to accept their views in regard to crime and its punishment. On the point of free will, Merkel takes exceptions with both doctrines: against the idealistic school he insists that legal and criminal responsibility do not rest on free will, while he opposes the sociological and anthropological doctrines on account of the consequences they draw from the deterministic view in regard to crime and punishment.

The sociological and anthropological doctrines of crime and punishment are very much alike. They agree in their opposition against punishment as retaliation. Indeed, logically we can punish an action only if it could have been avoided, *i. e.*, if the person could have acted otherwise. Without free will, therefore, apparently no guilt, and without guilt no punishment. Determinism seems to take away from punishment every function except that of frightening off future criminals, a view which past experience has proved to be thoroughly unacceptable. Both doctrines insist that an action must not be judged isolated from the criminal, his antecedents, and his surroundings, but that the real danger for society lies in his character and what may be expected from it for the future. This is the point of Merkel's attack. He shows that the distinction between punishment as a retributive measure and punishment for a purpose is artificial and unsatisfactory. History shows that punishment always had the purpose of maintaining an existing order and that the amount of punishment reflected the im-

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portance which public opinion attached to the maintenance of this order and its disturbances. As government increases in its power, punishment ceases to be a personal reaction against pain inflicted and is meted out according to fixed laws. Punishment certainly has not the purpose to defend or establish an absolute moral law, as is seen from the considerations of public welfare, which frequently decide the amount of punishment given. Punishment refers to a past deed, but not in so far as it belongs to the past, but because it is an element affecting the present and the future by its consequences. Not the fact that somebody at some time in the past has fallen sick is the cause of medical treatment, but the actually existing conditions and the dangers arising from them call for the interference of the physician. Similarly it is bootless to ask whether we punish "quia peccatum est" or "ne peccetur."

To make the dangerous character of a criminal the object of punishment means the destruction of our present legal system. The criminal could not be punished any more than the lunatic. There would be no sense—not even that of frightening off possible wrongdoers in the future—in punishing a person who has become guilty through a combination of circumstances which never will arise again, if his reaction does not prove any dangerous tendencies within him. On the other hand, we would have to take preventive measures against individuals whom we recognize as dangerous, although they may not yet have committed any crimes. For the sociological and anthropological view the actual offense is nothing more than a symptom of the dangerous character of the individual, or a proof of his need for improvement. Punishment, for such a view, is a method of treating, or an experiment in removing certain anti-social qualities. The law could not threaten certain crimes with specified terms of imprisonment of given length, since there is no way of predicting when the cure will have taken effect, and since there obviously will be large individual variations. The person to judge the moral improvement of the criminal would have to be some prison official, on whom must devolve the duty to pass the final word on releasing the prisoner.

This double opposition of Merkel against the idealistic school of criminal law, and against the sociological and anthropological doctrines of criminology makes Merkel's book very delightful reading. The argumentation is subtle, but can be followed by a reader who does not profess to have any knowledge of the German criminal code.

University of Pennsylvania.

F. M. URBAN.

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PROSTITUTION IN EUROPE. By *Flexner Abraham*, The Century Company, 1914, New York. Pp. IX + 455, \$1.30.

This is the second volume of a series of four announced by the Bureau of Social Hygiene of New York City. The first was by Geo. J. Kneeland, on Commercialized Prostitution in New York City.

To get the material, Mr. Flexner spent a year in Europe and spent a second year getting it in shape. Practically every large city from

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London to Budapest was visited and every opportunity to see the situation and to observe the working of police agencies was given. The result is the most valuable study we have of European conditions. Without attempting here to reproduce the evidence offered, we may summarize the findings.

Everywhere in Europe prostitution has undergone the same development in recent centuries. The medieval city was small. The prostitute was known to all, the line between her and the virtuous woman easily and accurately drawn. Now the big city has come, with its lack of personal acquaintance. There is a large floating population. There are all types of prostitutes and it is impossible to separate or list all of them, let alone recognize them. In many regions illegitimacy involves little disgrace. The total cost of prostitution is enormous, being estimated in Germany at between 300 and 500 million marks. Prussia spends on her entire educational system only 200 million marks.

The demand is enormous. Irregular sexual connections are taken for granted on the part of the man. A German authority is quoted as saying that "Among the working classes, city or country, abstinence is excessively rare, and in the higher classes, practically insignificant." Sex instruction is little regarded. Yet a change is coming. Debasing literature and pictures are coming under the ban and many organizations are advocating higher standards.

The prostitutes are largely drawn from the poorer classes and districts. Though feeble-mindedness and other defects are in part responsible, yet poverty, the breakdown of home influences, street amusements and early suggestions are largely to blame. Prostitution is distinctly an urban phenomenon. To considerable extent the demand and supply are both artificially stimulated.

Under current law, as in Germany, prostitution is a crime, but one who is frequently guilty and who is voluntarily or not enrolled on official lists is free to continue the commission of crime. The real opinion of the people makes light of the offense of the man, damns the girl, and insists that the traffic is necessary; so the real situation is the same, regardless of law. Increasingly rises the demand that prostitution be considered a vice, not a crime, and to this Europe tends.

Whether the policy be regulation, as it is on the continent, or abolition, as in England, the results are the same. The attempt to secure registration has proven absurd, and all authorities know and admit that only a small fraction of prostitutes, say one-eighth or one-tenth, are actually inscribed. Moreover, regulation makes escape from the life more difficult and puts the power into the hands of some officer. The absence of a habeas corpus provision, as in France, makes possible the continued persecution of any woman to whom an officer may be hostile. Regulation does not prevent trouble. The situation, even on the streets, is no better where there are bordells than in cities lacking them. Mr. Flexner thinks the abolition of the bordell weakens the power of the white slaver. Segregation, then, is really non-existent in Europe, in spite of popular opinion. Nowhere do even the in-

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scribed group live there. There is little difference between conditions in London—unregulated, and Berlin—regulated.

The attempt to control the spread of disease by medical supervision is pictured as little less than a farce. In Berlin the laboratory is well equipped; in Paris "the establishment does not yet boast a microscope." The time between examinations varies from once a week to once a month, and the time spent on each patient probably does not average a minute. Hospital accommodations are inadequate, and St. Lazare at Paris is an awful dungeon. In view of the small number inscribed, there is really no regular inspection. Moreover, so superficial the examination, so brief the detention even when disease is discovered, it is clear that the whole system has broken down. There is coming a marked opposition to regulation, and in France a special commission recommended its abolition. One factor delaying this reform is the desire of the "moral police" to keep in touch with the underworld. Picturing the police systems as a whole in favorable colors, Mr. Flexner feels that "moral police" are badly demoralized.

"Abolition does not mean *laissez-faire*; in all the countries that I visited, abolition of regulation is accompanied by definite statutory authority to deal adequately with prostitution in so far as it imperils order and decency." Copenhagen, Christiana are backed by a higher public opinion than Berlin, and actual conditions, Mr. Flexner thinks, are better. Abolition places all prostitutes on the same basis. In regard to the attitude of the people, Mr. Flexner thinks the Scandinavians are far ahead of England, and the former are definitely tackling the evil. It is said that a larger percentage of the diseased is now reached than formerly. "Repression, in order to realize its full possibilities, requires an abundance of institutional facilities, such as now nowhere exist."

The lesson for America, the author states, is repression—not regulation.

The last fifty pages are given to digests of the regulations of various cities.

The author is to be complimented upon the clearness of his style, the abundance of evidence and pertinency of his illustrations. He has given us an exceedingly valuable study, and has handled his material in such masterly fashion that only a prude can take offense. It is greatly to be hoped that Americans will not overlook this volume.

University of Pennsylvania.

CARL KELSEY.

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"THE ENGLISH CONVICT." A statistical study. By *Charles Goring, M. D., B. Sc.*, Deputy Medical Officer, H. M. Prison, Parkhurst. His Majesty's Stationery Office, London, 1913. Pp. 440; nine shillings.

In this blue book, Dr. Goring records the results of a very careful statistical investigation into the characteristics of the English criminal. The term "criminal" refers here to the convicted criminal, and not to those with equal anti-social tendencies, but sufficiently successful to



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avoid conviction for their misdemeanors. The subjects investigated consist therefore of individuals who have been convicted of committing breaches of the law, sufficiently serious to be dealt with by imprisonment; and the author deals with this material in a detailed, objective manner. Again and again he emphasizes the importance of the statistical method, and shows how neglect of careful statistical work is largely responsible for the prominence of certain popular theories. The criminal has been held by some to be an atavistic anomaly; according to others he is morally insane; a third group would consider the criminal a rather poorly evolved individual, who, like a savage in a strange environment is insane relatively to the standards of that environment; the fourth group look upon the anomalies of the criminal as indicating his belonging to the large group of the generally degenerate. The author is extremely severe in his criticism of the theories of Lombroso, and emphasizes the impressionistic origin of the extremely sweeping generalizations of his school. The present investigation is divided into two parts. The first consists of an inquiry into the alleged existence of a "Physical Criminal Type;" the second deals with seven separate topics, all of which, however, are connected. The topic dealt with in the various chapters of the second part are:

Chapter I, The Physique of Criminals.

Chapter II, Age as an Etiological Factor in Crime.

Chapter III, The Criminal's Vital Statistics.

Chapter IV, The Mental Differentiation of the Criminal.

Chapter V, The Influence of the "Force of Circumstances" on the Genesis of Crime.

Chapter VI, The Fertility of Criminals.

Chapter VII, The Influence of Heredity on the Genesis of Crime.

In part I, dealing with an inquiry into the alleged existence of a "Physical Criminal Type," the author discusses the general statistical methods involved. He presents in detail the results of his investigations, and he comes to the following conclusions: No evidence has confirmed the existence of a "Physical Criminal Type," such as Lombroso and his disciples have described. Our data do show that physical differences exist between different kinds of criminals precisely as they exist between different kinds of law-abiding people. But when allowance is made for a certain range of probable variation, and when they are reduced to a common standard of age, stature, intelligence, and class, etc., these differences tend entirely to disappear. \* \* \* In fact, both with regard to measurements and the presence of physical anomalies in criminals, our statistics present a startling conformity with similar statistics of the law-abiding classes. *There is no such thing as a "physical criminal type."*

In the first chapter of the second part, the author still deals with the physique of criminals, and he concludes that all English criminals, with the exception of those technically convicted of fraud, are markedly differentiated from the general population in stature and body weight; in addition, offenders convicted of violence to the person are characterized by an average degree of strength and of constitutional soundness

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considerably above the average of other criminals, and of the law-abiding community; finally, thieves and burglars (who constitute, it must be borne in mind, ninety per cent of all criminals), and also incendiaries as well, being inferior in stature and weight, are also relatively to other criminals and the population at large, puny in their general bodily habit. *These are the sole facts at the basis of criminal anthropology*; they are the only elements of truth out of which have been constructed the elaborate, extravagant, and ludicrously uncritical criminological doctrines of the great protagonist of the "criminal type" theory.

As to the mental differentiation of the criminal, the author took up the study of the differentiation of criminals in mental characters. He studied their temperament, temper, facility (or pliability), conduct, suicidal tendency, insane diathesis. His conclusion is that the one vital mental constitutional factor in the etiology of crime is defective intelligence. As to the influence of the "force of circumstances," the author disagrees absolutely with the criminal sociologists, who say that the source of crime must be sought in the adverse social and economic environment of the malefactor. His own conclusion is that "relatively to its origin in the constitution of the malefactor, and especially in his mentally defective constitution, crime is only to a trifling extent (if to any) the product of social inequalities, of adverse environment, or of other manifestations of what may be comprehensively termed the "force of circumstances." The criminal is unquestionably a product of the most prolific stocks in the general community, and therefore it is false to hold that criminals share in the relative sterility of all degenerate stocks. As to the role of heredity, the criminal diathesis revealed by the tendency to be convicted and to be imprisoned for crime is influenced by the force of heredity in much the same way, and to much the same extent as are physical and mental qualities and conditions in man.

The author is to be congratulated upon the successful completion of an arduous research, the results of which he has presented with remarkable lucidity, a quality which is, however, not gained at the expense of accuracy. The work is an extremely valuable contribution to our knowledge of the actual facts concerning the convicted criminal.

Johns Hopkins University.

MACFIE CAMPBELL.

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KINDERAUSSAGEN IN EINEM SITTLICHKEITSPROZESS. By *Karl Marbe*. *Fortschritte der Psychologie und ihrer Anwendungen*, Vol. 1, 1913, Pp. 375-396.

Professor Marbe, who is now in charge of the psychological laboratory at Würzburg, was called upon to give expert testimony in aid of the defense of a school teacher accused of immoral sexual relations with seven of his girl pupils. The accusations against the teacher were due partly to the fact that he was accustomed to indulge in certain familiarities with his pupils that were unwise, though neither criminal nor immoral (caresses, tickling, etc.) and that these familiarities led to rumors which were speedily exaggerated and then used by some of his enemies in

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the village to foment prejudice against him. The interest in the case for the psychology of testimony lies partly in the example it affords of the development of rumors, and of the effect upon the minds of young girls of stories connected with alleged sex offenses, and partly in the role played by the psychological expert in coming to the defense of the teacher.

Professor Marbe presented to the court a fairly lengthy summary of the investigations made by psychologists into the nature of the testimonial process, in the course of which he made clear the necessity of taking a critical attitude toward the testimony of children, the necessity of eliminating suggestive questions when securing information from children, and of discounting evidence offered by young girls on a matter of sex, even when the testimony seemed at first to show general agreement among the various witnesses. His presentation was reinforced by the narration of a number of concrete examples of these principles.

Marbe then applied these principles to the case before the court and presented a very interesting analysis of the testimony offered by the young girls, showing how they had all been influenced by the testimony of a single girl, who was herself conclusively proved to be quite unreliable, how girls of this age might start from a few not clearly understood facts and weave from them a tissue of testimony that seemed to have verisimilitude, and how the collection of this testimony had been accomplished by the psychologically unwarranted method of asking questions that could be answered only by "yes" or "no," thus giving free rein to the operation of suggestion emanating from the examiner. The girls really did nothing but affirm what the questioner had implied in his questions. Their evidence was self-contradictory when put to the test of careful analysis, was logically absurd, and varied from day to day—usually growing in enormity of the alleged offences until Marbe took the stand, when they broke down and confessed to their false accusations, all save two girls whose evidence was eventually disproved by medical examination of their own persons. Marbe also criticized the court for failing to take exact stenographic reports of the evidence secured by the question-and-answer method, since the result of this failure was to obscure the precise statements of the girls, to distort their statements and to render it difficult to disentangle accurate statements of fact from invented and imaginary replies made to fit the form of the examiner's questions.

Marbe's testimony aroused considerable hostility on the part of the prosecution, but it had its due effect upon the court, so that the teacher was acquitted. The case, then, adds one more to the number in which the work of psychologists has been of direct concrete value in the courtroom.

Cornell University.

G. M. WHIPPLE.

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GENERAL PARESIS. By *Prof. Emil Kraepelin*, Munich. Translated by J. W. Moore, M. D. *Nervous and Mental Disease Monograph*, Series No. 14. Pp. 197. Nervous and Mental Disease Publishing Co., New York, 1913.

Kraepelin's publications on psychiatric subjects have for several

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years been regarded as authoritative text books on mental disease, and this volume adds further proof of his ability as a psychiatrist and medical writer. The subject matter is presented in a lucid and comprehensive manner and covers the whole field of research work relating to the subject of paresis.

This monograph consists of seven chapters. The first chapter is introduced by a brief mention of the early history of paresis. This is then followed by a detailed review of the general symptomatology of this disease. Considerable attention is devoted to the discussion of the methods of the cytological examination as performed by Alzheimer, Schaefer, Nonne, Apelt, Wassermann and Plaut.

The second chapter describes the difficulties that have been encountered when endeavors were made to classify this disease on a physical or psychical basis, and though the author, for purposes of description, makes four chief clinical divisions, he very aptly states: "If we distinguish, as is the usual custom, the following principal forms of paresis, the demented, the depressive, the expansive and the agitated, we must not be deluded into believing other than that such a grouping is entirely arbitrary and that its only value is to facilitate the presentation of the subject. The same holds for any other of the numerous attempts to classify the clinical material solely in a basis of psychic or physical signs."

Kraepelin states that the demented form is the most frequent type of paresis with which he has to deal. He finds this type in 56 per cent of the men and in 73 per cent of the women, and he gives the average duration as 30.05 months in men and as 26.4 in the women. In the "classical" or grandiose form he found that convulsions were much less frequent and remissions more common than in the demented type. The expansive form was observed to occur later in life and more frequently in men.

The symptoms of the depressed and agitated forms are carefully portrayed and their clinical distinction made very clear. The course of the disease as observed by him is then compared with the findings of his German confreres, some of whom report cases of paresis lasting as long as twenty and thirty years, but Kraepelin has very serious doubts as to the accuracy of the diagnosis of these reported cases. He reports no cases of cure and he states that the regular termination is death and tacitly says: "In fact, one does well to regard with greatest skepticism cases of 'cured' paresis, since Nasse found that of six recovered cases observed by him, only one failed to have a relapse, and in this one the diagnosis was not free from doubt."

The third chapter is devoted to the discussion of the pathology of general paresis. The gross changes are described first and these are concerning the changes in the weight and shape of the bones of the skull, the loss of brain weight, atrophy, distortion of the convolutions and the characteristic inflammation of the meninges. Barratt in his chemical study of the brain substance found that the sulphur content of the brain was lowered. A complete survey of the most important histopathological work is given, including the studies of Tuzceck, Weigert,

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Fischer, Schaffer, Broadmann, Sciuti, Nissl, Sträussler, Alzheimer and Racke.

The cord affections which occur in general paresis are also described in this chapter, and these are said to be a degeneration of the lateral and posterior columns which resembles the pathological conditions found in tabes. The changes found in the viscera and the cardio-vascular system are also described. No mention is made, however, of the finding of the *spirocheta pallida* in the brain substance of paretics by Noguchi, and it is very probable that this monograph went to press before this discovery. The finding of the *spirocheta pallida* has, to my mind, absolutely established the pathogenesis of general paralysis, which has so long been a puzzle to the psychiatrist. The helplessness of the disease is thereby somewhat relieved. New methods of treatment may be evolved.

The subject of etiology is thoroughly discussed. It is pointed out that males are more susceptible than females, also that racial, climatic and geographical distribution exercise but little influence for the development of paresis. Concerning this subject Kraepelin forcibly states: "Nor can climate play any important role, since in all latitudes there are countries in which paresis is rare and, what is more significant, Europeans in other climates are just as apt to become paretic as in their home countries. We are drawn much rather to the conclusion, from the considerations mentioned, that paresis stands in some casual relation with the general habits of life, such as those which prevail in middle Europe and which have spread with Europeans to other lands."

Kraepelin found that the greater number of paresis develop between the ages of 35 and 45 years in men and between 40 and 45 in women, but it is suggested that the climacterium may exert an influence. Juvenile paresis also receives its full share in the chapter. While heredity plays the important part in juvenile paresis, its action is less potent in this disease than in any other forms of mental alienation. Schlegel reports defective heredity in 56.6 per cent cases.

"We must regard syphilis as the only essential cause of paresis. \* \* \* The last link in the chain of proof of the syphilitic origin of paresis is closed through cytological and serological studies. Both have shown us that in paresis we regularly find those conditions which are characteristic of syphilis—increase of cells in the spinal fluid and occurrence of plasma cells and complement-fixation in this fluid and in the blood serum."

Chapter six is devoted to the discussion and the diagnosis. "The recognition of general paresis is one of the most important problems of psychiatrists, because upon it depend, almost always, important legal measures, especially of a domestic nature (separations, dissolutions of business)."

After stating the difficulties of early differential diagnosis, the author concludes this chapter by saying that the cytological and serological tests are the determining ones and that a lumbar puncture should be performed in every possible case.

The last chapter is introduced by the terse statement that "the combating of paresis must begin with prevention." Alcohol is a most

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pernicious factor, and if syphilis is to be restricted, so must be the use of alcohol.

The frequent examination of the spinal fluid and blood is necessary, and the necessity of continuous and vigorous anti-syphilitic treatment is demanded in all cases of syphilis. But once the paresis has begun, it is the universal opinion that the use of mercury is decidedly dangerous. The use of atoxyl, tuberculin, bacterial toxins, nucleinic acid, lecithin and paretic serum are briefly described, but not in any way approved. The author states that the value of "606" is still unknown and the future only can determine the results of its use. The treatment in general is dietetic, hygienic and symptomatic; much stress is laid on careful nursing and the importance of hydrotherapy in the form of warm baths.

In conclusion of this brief review it may well be said that those interested in psychiatry will do well to study this valuable contribution to that subject.

Indiana State Prison.

PAUL E. BOWERS, M. D.

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KRANKHEIT UND SOZIALE LAGE. Three volumes, by Dr. M. Mosse and Dr. G. Tugendreich. J. F. Lehmanns, Münschen, 1912. Pp. 495, 230 and 696, M. 6, 6 and 3.

The editors of this handbook on the correlation between disease and economic condition asked several prominent physicians, statisticians and government officials for the contributed articles, hence the reason for slight differences of opinion in the work. It presents what German scientists believe to be an exact presentation of the interrelationship between disease and economic condition. As it is a handbook for Germany, its arguments are from a national point of view, and only occasionally are European statistics quoted. While differences in racial, climatic and social conditions prevent generalization, all countries will sooner or later have to meet similar perplexing problems. In the United States these problems will be particularly difficult to solve, owing to the lack of reliable statistical material and to the widespread puritanical point of view, which so successfully interferes with an absolutely free discussion of questions pertaining to sex and vice. It will be a distinct advantage to Americans to learn how an industrialized country on the other side of the Atlantic is trying to meet and handle these issues; on this account the book will be reviewed at some length.

In opposition to the bacteriological school, which attaches little value to economic conditions as disease furthering and breeding causes, the editors of the handbook desire to bring out their great importance. While natural causes like bacteria, dust and poisonous fumes are responsible for the morbidity and mortality of the population without class distinction, economic conditions, like housing, wages, hours of labor and others affect particularly the health of the lower strata of society.

Adequate morbidity statistics, except for a few diseases, for which Germany has compulsory notification, do not exist. Even if physicians published their case records, the material would be unsatisfactory. In

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spite of much progress made during the last decades, there is still a large part of the population, which either out of ignorance and superstition or on account of poverty, fails to seek medical assistance even in case of serious illness, especially in rural districts. The latest extension of the compulsory sick insurance to agricultural laborers and home workers will bring about a much needed change. There is little information about the relation between morbidity and mortality in the different classes of society, still less about the general state of health, except in countries with large standing armies.

While wealth has its specific dangers as well as poverty, rich people as a rule live longer than the poor, who are often unable to have good medical and hospital care. The principal discussion is concerned with diseases which are chiefly bred of poverty and of occupations in different dangerous trades.

Experts disagree on the question as to how far the density of population in overheated and ill ventilated quarters is responsible for the most deplorable infant mortality in Germany. Some experts contend that both breast nursed and bottle fed babies are affected equally by overcrowding, while others believe that almost exclusively, children who are improperly fed, are stricken.

Dr. Koelsch not only points out what Germany has accomplished in protecting and safeguarding machinery, but also how much remains to be done. The reader will remember Miss Josephine Goldmark's standard work on "Fatigue and Efficiency," in which she deals with the correlation between long hours of work in badly lighted and ill ventilated, dusty workrooms, sometimes in unnatural positions, and at machines too heavy for minors and children, and the state of health of the workers. It is evident that unhealthy conditions of work so further the spread of infectious diseases that they sometimes assume an epidemic form.

Some occupations, reputed as especially healthy, call for a strong, vigorous and healthy set of men, whose excellent physical constitution protects and safeguards them against some of the dangers inherent in the trade. By proper training and education of the workers it is possible to reduce the morbidity and mortality in quite a number of cases. Seeking medical aid immediately, is often a means of successfully preventing a long sickness or even a more serious result. The statistics of the sick fund of Leipzig show that many working women, when pregnant, prefer to become voluntary members. In this case they must pay the whole dues, while otherwise the employer contributes one third. Voluntary members can stop working and rest whenever they feel like it. As a result, they show only 0.3 per cent of premature births and 2.3 per cent of miscarriages, against 1.7 and 15.5 per cent of the others, who stop working only two weeks before confinement.

The following rules ought to be observed in order to reduce to a minimum the dangers of certain occupations:

A minor should select an occupation for which he is best fitted both physically and mentally.

The workers should use all protective appliances with which the shop is provided, and the employer should realize that proper sanitary

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and hygienic conditions in the workrooms are a paying investment instead of a financial burden on production.

Factory inspectors, assisted by physicians, should see that the laws are observed, and the courts should punish with imprisonment employers who willfully disregard the regulations.

Social legislation should keep up with social science.

Most industrial countries of Europe are now facing the serious problem of how to regenerate the population. This question came prominently before the English nation at the time of the Boer war, but other nations are suffering from the same phenomenon. In Germany from 1904 to 1908 only 53.3 per cent of the men were found fit for service. Weak constitution was the reason for rejecting 19.3 per cent of the people who were examined. Unfavorable economic conditions prevent many from getting the proper quality and quantity of food. Quite a number of men are rejected because their health has been impaired by their occupation. I remember from my own experience the difficulty encountered when the recruits came in. Many had forgotten the proper use of their limbs, which had become crooked and straightening them out was difficult. The best way of checking degeneration seems to be a shortening of the working days, a minimum wage for underpaid occupations, and above all, compulsory physical exercises in the continuation schools and the possibility of continuing all kinds of sport afterwards.

Prominent writers in the United States complain about the rapid increase of mental diseases, caused by the tremendous speed of life and work, and the difficulty, especially of the foreign born to adapt themselves to it. The same is true for Germany. Suicides and criminals seem to increase everywhere. Some people seemed to be inclined to attribute the former phenomenon to a relaxation in religious belief, the latter to greater educational facilities. Though better education has not checked crime, it has at least noticeably reduced its most atrocious forms. The greater economic differentiation and the fierce competition in the cities give greater opportunity of committing crimes than the rural districts. It is not possible to prove the connection between race, religious belief and crime directly, but it might be said that creeds which try to keep their followers in ignorance, contribute to their remaining at a lower level of society, prevent them from progressing economically and thus indirectly may cause their delinquency.

Few diseases are as intimately connected with economic and social conditions and relations of mankind as the venereal diseases. In some provinces of Russia, the Balkan states and Asia Minor, where housing and living conditions are extremely unsanitary and low, syphilis has become more of an endemic disease. Only Denmark and Norway have introduced the obligatory notification of these diseases, hence their statistics furnish reliable material for study. As the infection does not at the beginning oblige men to stop working, it does a lot of damage in the body before it is attended; many still prefer the services of quacks instead of a reliable specialist. The chance for infection is greater in cities than in rural districts, though their morals are about the same. The working classes enjoy in most European countries much sexual freedom, which



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finds a different expression in the cities and in the rural districts. In the latter a man keeps company with one girl, and often marries her when she expects a child; in the former relations are more temporary and changing. Moreover, the publicly licensed or the clandestine prostitute, the chief source of infection, inhabits urban centers.

Interesting are statistics of Denmark and Prussia, which show the number of infected per 10,000 population.

Denmark	Prussia
Copenhagen . . . . . 202	Berlin . . . . . 187
Small cities . . . . . 30	Prussia . . . . . 62 to 75
Rural districts . . . . . 3.8	Prussia . . . . . 9.6

In Denmark the ratio of infected women to men is 1 to 4; in Frankfurt one to three. This means that one woman generally infects three or four men, or that one out of three or four men infects another woman. Blaschko believes that the number of infections is proportional to the marriage age.

The statistics of different sick funds in Berlin reveal the spread of these diseases. The actual number given therein is probably still below the number of infected:

Clandestine prostitutes . . . . .	30 per cent
Students . . . . .	25 per cent
Clerks . . . . .	16 per cent
Working people . . . . .	9 per cent
Army . . . . .	4 per cent

The German army makes the best showing of all standing armies. The German soldier is not more moral, but he is told how to protect himself against infection. His pay is so small that he cannot think of going to a prostitute. He enters into relations with a girl of his class, and frequently marries her after his two years are over.

The most valuable part of the handbook is part four, in which the duties of the state and the municipality in preventing and fighting disease breeding economic conditions, are discussed.

The German Empire has a federal sanitary board with the following departments:

- Public health, including housing, heating, schools, baths, burial.
- Foodstuff.
- Pure water and sewage disposal.
- Factory hygiene.
- Epidemic diseases.
- Medical service in hospitals.
- Medicaments and poisons.
- Veterinary service.

While the most important matter is regulated by federal law, the individual states regulate minor matters, always in such a way that the regulations are uniform.

Whenever the legislature of the Empire is asked to take up a question, ample statistical data are furnished by the imperial statistical bureau, which constantly investigates social and economic conditions. As

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bad housing is responsible for many cases of illness and death, the Empire, the states, the municipalities and private organizations, either provide better houses for groups of people, or make it possible for their organizations to borrow money at low rates for building purposes. Compulsory housing inspection has not been introduced into the Empire, individual states and cities have it though, and the Prussian speech from the throne promised its introduction into Germany. The political influence of the house-owners is great in the city parliaments. As a class they are opposed to legislation which diminishes their profits and interferes with the control of their property. The modern regulations of the building police have, however, considerably curtailed the absolute dominion of the house-owners. In a similar way, imperial legislation has obliged the manufacturers to provide dangerous machinery with safeguards, even though it interferes with the process of production. Legislation for limiting working hours, except for women and minors, has been less extended. Through the imperial legislation of insurance the laborer is sure of sufficient assistance whenever sickness or an accident prevents him from providing the necessities for his family. The more enlightened municipalities have recently even imported meat and other foodstuff from abroad for the masses of the population. In order to bring demand for and offer of labor together, employment agencies with a non-partisan board have been established throughout the Empire. The burning question of what to do with unemployed has been partly solved by municipal insurance in different forms, and by providing work, especially for the unskilled laborers. Money is appropriated for the execution of work, but it is undertaken only when winter reduces the number of regularly employed laborers. Different governmental undertakings follow the same policy.

The handbook contains an astonishing amount of exceedingly useful information for physicians, statesmen, social workers and the general public. It would be an immense gain if an investigation of the same conditions and their results could be made in the United States, a social survey of the whole country, instead of the many which depict and describe local conditions. Professor Tugendreich and Dr. Mosse's book will undoubtedly stimulate all who work for improving the conditions of the masses who live and work under highly unfavorable circumstances.

Chicago.

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# Journal of the American Institute of Criminal Law and Criminology

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# Journal of the American Institute of Criminal Law and Criminology

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## EDITORIALS

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### EXTRADITION OF THE INSANE.

If any other evidence than that afforded by the Thaw case were required to draw public attention to the necessity for interstate extradition laws to govern the insane who have escaped from custody in one state and have fled into another, it is at hand, no doubt, in many states. The need for such legislation has been emphasized in an address by Dr. Henry R. Stedman of Boston before the Psychiatric Society of New York. The matter was referred to the Committee on Legislation of the society with instructions to draft a bill to be introduced in the legislature of the state of New York.

We cannot better illustrate the simple-mindedness of the state in her relations to the insane who, having committed criminal acts in one commonwealth, have escaped from restraint and fled across the state line, than by quoting the descriptions of cases from Dr. Stedman's address.

"The savage attack upon Postmaster Morgan of New York City on November 9, 1908, in which he was shot and seriously wounded, was made, it will be remembered, by an insane man, who immediately after the act took his own life. This person was a case of dementia præcox of the paranoid type. He was sensitive and socialistic and eccentric in behavior and personal appearance. He became the butt of the boys in his neighborhood, and in 1896 asked permission of the police to carry a revolver. This having been denied him, he armed himself with two, threatening to shoot his persecutors, and in 1897, when, as he claimed, they attempted to mob him, he shot one of them. In 1903 he shot in the face a fellow employee who had torn his coat in a scuffle, and refused to pay for it. He was then arrested and committed to the State Hospital at Worcester, Mass., to the present superintendent of which, Dr. Scribner, I am indebted for information regarding him. He had reflected for many years upon his adverse circumstances, gradually developing delusional ideas which involved these "toughs," whom he came to regard as responsible for his supposed reputation as a coward, etc. Failing to obtain justice at the hands of the police, he formulated a plan whereby in killing the whole gang, as well as himself, the inefficiency of those in authority would be exposed and an example set.

"On May 25, 1904, he escaped from the hospital, fled to New York City, and secured employment as stenographer for a law firm. When it became known that he was there the attempt was made through the state and local police to secure his return to the hospital. The district attorney decided that he could not be



## EXTRADITION OF THE INSANE

extradited. In the meantime his employers, who had been notified of the dangerous nature of his insanity, maintained that he was sane and would fight any attempt to return him to the hospital. The patient at the same time retained the services of a Worcester lawyer. His dying statement was that he shot the postmaster 'as the last protest of a poor man against the custom of never enforcing laws against prominent and wealthy people.' He asserted that the postmaster had withheld a registered letter to him, and that he had selected the postmaster as his victim because he was the most prominent man who had antagonized him." \* \* \*

"A more recent case is that of a woman of 28, a married nurse of considerable capability, intelligence, and superficial refinement, who left her husband in England and came to this country. Hers was a case of moral insanity. She was an inveterate liar, and was in a few days or weeks discharged from four or five hospitals in which she was employed. She continually defamed respectable physicians and families in which she was employed by wholly unfounded charges of gross immorality, and is reported to have administered overdoses of medicine and given morphine without orders. She had a proclivity for inventing circumstantial accounts of sexual conversations and experiences. Employers and friends questioned her mental soundness. She was arrested in the fall of 1910 for ransacking the apartments of her aged patient after her death. The robbery, which she denied having committed, was so wholesale and the articles stolen so valuable as to expose her to immediate detection. She was committed to the Reformatory for Women in March, 1911. After several examinations she revealed the fixed delusion that she was the victim of a plot to incarcerate her in order to prevent her from making scandalous disclosures regarding the family of a prominent and respected lawyer, which she maintained would ruin his political career. She repeatedly declared that his withdrawal of his name as nominee for a high office was wholly on this account. She narrated fictitious visits made by him to her patient, and said that he gave a false name in order to spy upon her. She also accused the superintendent of the Women's Reformatory of general persecution of her, of intimate and coarse conversation of a sexual nature with her, and confidences regarding the management of the reformatory impossible to have occurred, etc., etc. The writer certified that she was a case of congenital moral insanity of high grade, with late development of delusions of persecution, and a menace to society at large.

"She was accordingly transferred to a state hospital in Massachusetts on March 15, 1911. She escaped from that institution on September 28, 1912, and after a prolonged search by means of detectives, the police and circulars sent broadcast over this country and Canada, was finally located in a New York hotel where she had secured employment, without taking the simple precaution of assuming another name. She was apprehended and sent to the Manhattan State Hospital. Dr. Mabon, the superintendent, re-

## EXTRADITION OF THE INSANE

ports that while there the Bureau of Deportation of the New York State Hospital Commission attempted to have her returned to Massachusetts; accordingly she wrote and secured the services of a woman lawyer, who obtained a writ of habeas corpus, on which five hearings were held. She succeeded in postponing the case and on various pretexts, greatly delaying the settlement. For some time the contest was over the legality of extraditing an insane person, and only at the last moment was the evidence brought out that when transferred from the Massachusetts Reformatory to the state hospital there she had not completed her sentence, and was still a criminal under state control. The writ was accordingly dismissed and the patient deported to the Massachusetts hospital on January 29, 1913."

It is undoubtedly true, as Dr. Stedman says, that many such characters as those described above are, under our present laws, or lack of laws, returned quietly to the communities from which they have made their escape and no questions are asked, *provided they have no influential but misguided friends to take up technical cudgels for them.* But it is different when wealth, influence, and ignorance combine to fight for the unjustified liberty of the unfortunate "guilty-but-insane." Additional statutes to protect against such sinister influence would serve a good purpose and we hope that the Institute of Criminal Law and Criminology will take the matter up and prosecute it with vigor. Massachusetts led the way in this matter, prompted by the attempted assassination of Postmaster Morgan in 1909, referred to above. Her law, says Dr. Stedman, is the only interstate rendition law in the United States applicable to insane persons. We quote the statute in full below:

Sec. 87. The governor may, upon demand, deliver to the executive of any other state or territory any person who has escaped from an institution for the insane, public or private, to which he has been committed under the laws of such state or territory, and who may be dangerous to the safety of the public, or may upon application appoint an agent to demand of the executive authority of any other state or territory any such person who has escaped from such an institution in this commonwealth. Such demand or application shall be accompanied by an attested copy of the commitment and sworn evidence of the superintendent or keeper of the institution stating that the person demanded has escaped from such institution, and by such further evidence as the governor may require.

Sec. 88. If the governor is satisfied that the demand conforms to law and ought to be complied with, he shall issue his warrant under the seal of the commonwealth to an officer authorized to serve warrants in criminal cases, directing him at the expense of the agent who makes the demand, at a time designated in the warrant, to take and transport such person to the boundary

## RELATION OF POLICE AND OFFENDER

line of his commonwealth and there deliver him to such agent. The officer may require aid as in criminal cases.

Sec. 89. A person who is arrested upon such a warrant shall not be delivered to the agent of a state or territory until he has been notified of the demand for his surrender and has had an opportunity to apply for a writ of habeas corpus, if he claims such right of the officer who makes the arrest. If the said writ is applied for, notice thereof and of the time and place of hearing shall be given to the attorney-general or district attorney for the district in which the arrest is made. An officer who delivers such person in his custody upon such warrant to such agent for extradition without having complied with the provisions of this section shall forfeit not more than one thousand dollars. Pending the determination of the court upon an application for the said writ the person shall be detained in custody in a suitable hospital for the insane.

Sec. 90. If the application for the arrest of a patient escaped from an institution, public or private, in this commonwealth, is complied with and an agent is appointed, his account shall be paid by the institution from which the patient escaped, but the governor may direct the whole or part of such account to be paid by the commonwealth."<sup>1</sup>

ROBERT H. GAULT.

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## COMMON SENSE RELATION OF POLICE AND OFFENDER.

Maltreatment of a first offender by an arresting authority, particularly where there is no provocation, is known to have prompted the unfortunate subject to become more hardened and to depart from the trifling to the serious practices. Individuals apparently without force are often prodded to desperation by a controlling physical or moral influence. The individual who is authorized to arrest possesses great power and should ever be mindful of the fact that the law contemplates that penalties for violation shall not be in any wise imposed until after a presentment and hearing before a competent court. The fear of arrest carries with it suffering for the apprehensive one, even

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<sup>1</sup>*Commonwealth of Massachusetts v. Klaus*. Decision rendered July 7, 1911. In 145 Appellate Division Reports of Supreme Court of New York, page 798.

One of the highest legal authorities, a former attorney-general of Massachusetts, pronounces this act as constitutional and manifestly in the public interest because if uniformly adopted a state could enforce its responsible and continued control over a dangerous insane person escaping into another state and the community into which he had come would be delivered of the danger of his presence and responsibility for his care. The operation of the act, however, might be hampered because of constitutional questions arising in *habeas corpus* proceedings regarding the expulsion from a state of any person other than a fugitive charged with crime. It is therefore, he thinks, of the utmost importance that such statutes should be most carefully drawn in order to eliminate these questions so far as possible.

## RELATION OF POLICE AND OFFENDER

though an aged delinquent; this, however, without legal intention or manner of legal avoidance, but application of penalty follows from the moment of committal of offense.

The graduated offender becomes downcast and sullen, as a general proposition, when deprived of his liberty, while the stranger to the grasp of the law usually breaks with tears in his eyes and a bleeding heart. In other words, the malefactor who has undergone repeated experience of arrest and who may not have had anything else than liberty to lose, does not show the bitter mental pangs that are shown by the one who for the first time is under restraint of the law. The illiterate, ignorant of the many requirements of the statutes, become an example of inquisitive anxiety, and when arrest overtakes the growing youth who has had all advantages, able to contemplate and realize, many times the shock alone leads to permanent and incurable distress.

If all this be true of man, the sterner sex, who is, through contact and environment, better prepared to contend against such misfortunes, how much greater must be the afflictions that follow the awakening of those of the weaker sex, who are taken into the custody of arresting officers? The enormity of the crime committed adds to the agony of those concerned.

The mental distress resulting from arrest is not, of course, generally evident in cases where intoxication, insanity or other disordered mental conditions prevail, when the character under restraint will be oblivious or indifferent to the situation.

The distress incident to thousands of cases, prior to and up to the time of court procedure or determination, appeals to the sympathy of many kind-hearted members of police forces, who not infrequently lend aid and comfort from the humanitarian point of view.

The International Association of Chiefs of Police in annual convention endorses the following sentiments as expressed by their presiding officer:

"The tendency of the times is to accomplish the end through the application of intelligence, rather than force. Humane efforts are exercised by the police in a manner not heretofore known. Especially is this true in dealing with juvenile offenders. There has been a great deal of sentimental talk about criminals, which has often gone too far, under the guise of humanity. We know that few real criminals reform, yet there are hundreds of instances where minds and bodies diseased have been presented to the court as such, by the police, with words for the unfortunates, which touched the court and minimized penalties imposed.

"There prevails an impression in many parts of the land that

## RELATION OF POLICE AND OFFENDER

the police officer is always seeking trouble. While he is but human, it is not for him to allow his personal disappointments or grievances to enter into his police work. At least, those comprising a properly conducted institution discourage such practice. The policeman's position is that of the representative of the law, wearing the insignia which stands for peace and good order, and as such he should be respected. In line with proper administration, the member of the force should be instructed so as to have this thought uppermost in mind at all times as should the good citizen."

The application of humane treatment does not mean that the officer in contending with thugs and burglars, who go about in the night-time loaded to murder unoffending citizens, or the wretched leader of the slums, should administer the remedies prescribed by law in sugar-coated doses, but it suggests the application of common sense coupled with humanity. Brutal treatment may derange for all time to come, an innocent person arrested.

Although inferior to the male physically, the female violator of the law, like the male violator, must not infrequently undergo additional humiliation or penalty in this regard. It is important that a member of the force should discriminate in the handling of the sex, yet, under circumstances which some policemen can relate, women of powerful physique, armed with clubs, knives, red pepper, if not with an ax or vitrol, have, in their craze and fury, made it necessary for the representative of the law to use force to the extent of inflicting bodily pain as would be necessary in subduing one of their own sex. Such cases are infrequent, and usually follow where prompt action is necessary to avoid the sacrifice of human life.

In the modern police departments, for those densely populated sections of municipalities where a low order of degradation prevails, the prevention of crime and the maintenance of order is usually had by doubling the police force and by having signal boxes located in close proximity to each other, in order to hurry call for assistance. In this manner a sufficiency of force is maintained to make arrests, and to the avoidance of scenes.

Humane procedure in this age of progress would be for the police to have low-set motor conveyances in which to transport female prisoners to the station houses or to houses of detention. If the hardened character of the prisoner makes it necessary to confine violators in the station house, whites should be separated from blacks, young from old, and women should never be with men.

## THE LABORATORY IN THE CRIMINAL COURT

Every city should have an inebriate ward connected with its police stations, where prisoners who collapse could have the prompt attention of a physician—men as well as women.

Leaving the more degraded classes, consider the girl fugitive from home and parents, the one started on a wayward course, or the female charged with a first offense of shop-lifting or with having stolen from her employer. These should be and are usually taken to places of detention by officers in plain clothes. In my own jurisdiction, they are conveyed to a house of detention, and there placed in charge of a matron, who not only searches the prisoners, but affords them baths, provides them with night clothes, clean beds and linens and spreads, and furnishes them proper literature and instruction.

The conveyance attached to these institutions should have no lettering or insignia of police attachment, so that when a woman or girl is transported therein, it will be no unusual attraction for the curious, and thereby avoid humiliation for the unfortunate.

These prisoners should be classified from the time of arrest. Girls should be returned to their homes or friends without having to appear in court, if possible. First criminal offenders should be taken to court without knowledge of the sight-seeing public. Many should be given an opportunity to start life anew.

In department stores, where most of the shop-lifting or stealing of small articles is carried on, the disposition to arrest, except in flagrant cases, does not exist. Prisoners arrested by detectives are usually escorted into private places, and photographed and admonished. There are those known to have such weaknesses, whose relatives or friends make good for the losses sustained through their acts.

RICHARD SYLVESTER.

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## THE LABORATORY IN THE CRIMINAL COURT.

The fundamental purpose of the American Institute of Criminal Law and Criminology is becoming actual in our psychopathic laboratories. From its inception, the Institute has emphasized the laboratory ideal for the criminal courts and prisons. We are beginning to see the fruit of our urging, and it is satisfying. The laboratory in the Municipal Court of Boston, directed by Dr. Victor Anderson, and that in the parent court of Chicago, opened on last May first, with Dr. William Hickson as director: these are objects toward which we have set our faces.

One of the first committees appointed by the Institute was Committee A, charged with the duty to devise a system for recording data

## THE LABORATORY IN THE CRIMINAL COURT

concerning criminals. Under the chairmanship of Chief Justice Olson of the Municipal Court of Chicago, this committee made two reports which were published by the Institute, and which attracted national attention. In those reports it was urged that municipalities and counties should establish laboratories for the service of their criminal courts. It has struck home in Boston and in Chicago. In the state of New York, too, the movement is on the way. Mr. Louis Gibbs of New York city, a year ago introduced in the legislature of the state a bill providing for the establishment of a similar laboratory in every first class city of the state. The measure attracted favorable attention, and no doubt it will ultimately carry.

It is a matter for regret that a paper recently read in Columbus, Ohio, by Dr. Hickson of the Chicago laboratory, came to our hand too late for insertion in this issue of the JOURNAL. Dr. Hickson there reported that since May first he and his assistants had examined 245 boys who were sent to him from the Boy's Court. They were youths who had not been released on bail and ranged in age from 17 to 21 years. Of these only 7.34 per cent were reported as of normal intelligence. The others were morons, and many of the majority suffered from some specific moral defect.

In making the above calculations, Dr. Hickson is assured he has erred, if at all, on the side of leniency. All doubtful answers, when the Binet-Simon tests were being applied, were marked plus. The percentage of normal cases, he thinks, will fall below that indicated above when the data obtained from examination of youths who have been admitted to bail shall have been taken into account.

It is appropriate to compare the ages at which the different groups make their way into the criminal courts. The morons, on the average, stand before the bar 2.23 years earlier than normal cases, and the borderland group precede normal youths by 0.84 year.

Further confirmation of the general conclusion that we find in this paper may be found in what we may be allowed to call the "world test." Few delinquent youths can hold a job for more than a limited number of days or weeks. Those who hold on longer are usually inefficient and are the first to be laid off when the employer adopts a policy of retrenchment. The results of this world test, as an index of mental quality, cannot be expressed in quantitative terms. It is a valid test for all that. If a young man can and will fix his attention upon his work through thick and thin until he establishes himself, even as a reliable day laborer, he has shown a degree of self control that we cannot associate with mental deficiency of a serious nature. In the latest report of the managers of the New York reformatories is a study of one hundred successive

## THE LABORATORY IN THE CRIMINAL COURT

cases of failure on parole. The large outstanding fact in that investigation is that the young man who fails to meet the conditions of parole when he has been sent out from Elmira and Napanoch, fails because he will not hold his job. It is not, says Dr. Christian, the investigator, that the employers do not go half way, but that the young men themselves are shiftless. Dr. Hickson seems to approve such confirmation as this. Indeed he briefly refers, in his paper, to similar reports that he has received from social workers.

The economic side of this whole question is important, and manufacturing and commercial establishments are, with good sense, casting about for reliable means by which morons may be sifted out from the group of applicants for situations in their houses.

It is altogether probable that much of what appears as morosity at the chronological age of 20 is traceable to inexcusable social neglect. We allow unemployed youths between the ages of 14 and 16 to remain out of school and to lead lives of idleness in the street. This we permit, even while the law provides that they must be in school during these years, unless they are employed. But there is no authority to place these youths in the parental school where a place is provided for younger habitual truants. We have tied our own hands as far as these children are concerned, and give them an opportunity in their formative years to develop those mental habits or dispositions that put them in a position analogous to that of the constitutionally inferior.

If this data or anything approximating to it is confirmed we have found subject matter for an intellectual giant's constructive thought. On the one hand crime, and on the other education in America cost equally. How can we most effectively disturb this vicious balance in the right direction? We are finding the way. We must ultimately be able to discover the defective by specific tests before it is too late. We must try those who are suspected of constitutional deficiency in specially contrived environments for a long period if necessary. When they are once discovered beyond the shadow of doubt, by a strong hand we must eliminate them by life-long segregation from the opportunity to do wrong to their neighbors.

ROBERT H. GAULT.



## THE CRIMINAL, WHO IS HE, AND WHAT SHALL WE DO WITH HIM?<sup>1</sup>

WILLIAM N. GEMMILL.<sup>2</sup>

The procedure in our criminal courts has been severely criticised. Some of this criticism has been well merited, for in our eagerness to see that no innocent man is convicted, we have retained in our procedure many ancient rules of practice, whose chief function is to protect the guilty from just punishment. Most of the criticism, however, is misdirected, for it is aimed at the form, rather than at the substance of things.

It is important that our procedure should be simplified, in order that the innocent may be more speedily released from unjust arrest, and that the guilty may be more certainly punished. It is more important, however, that the punishment inflicted upon one who has violated the criminal laws, shall be measured by the gravity of his offense, and shall be fitted to the individual offender, not only with reference to his future welfare, but also with reference to the future welfare of the state. It is probable that in not over five per cent of the cases brought into the criminal courts, does the method of procedure, in any way affect the final outcome of the case. It is also probable that in over seventy-five per cent of the cases in the criminal courts of the first instance, the guilt or innocence of the parties is not open for consideration, but the guilt of the accused is admitted, and the only question before the court is, what to do with the guilty offender. If the state would do exact justice to all its citizens, it would be necessary to have as many laws as there are citizens, and each law framed and fitted to the individual. Just as no two individuals are alike, so in no two cases is the responsibility of the individual to the state and to society the same. All laws are framed to fit the average man, but no one has yet been able to find that man. It follows, therefore, that when justice is meted out to one man, injustice must be the lot of another, when he is measured by the same law. By our laws we define crimes, and prescribe penalties for those who commit them. The definitions of murder, manslaughter, burglary, robbery, larceny, and many other offenses, have not changed in four thousand years, but the penalties for these crimes have changed, almost with each changing genera-

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<sup>1</sup>Annual address of the president of the Illinois Branch of the American Institute of Criminal Law and Criminology, at Hotel La Salle, on Tuesday, May 26, 1914.

<sup>2</sup>Justice of the Municipal Court, Chicago.

## THE CRIMINAL

tion. The change in the penalties is due to our changing viewpoint. What in one age was thought to be proper punishment for an offense, was looked upon as barbarous in a succeeding age. As each generation has prescribed new penalties, based upon its conception of justice to the state, and the individual, so it has also defined new crimes to compel obedience to the higher ideals of the community. The last twenty-five years has witnessed a revolution in the criminal laws of every civilized state. More new laws have been defined and declared in the United States during that time than during all the previous history of the republic. From the days of Moses to the last two or three decades, criminal laws were nearly always negative in their character. "Thou shalt not kill." "Thou shalt not steal." "Thou shalt not bear false witness," were the formulae after which all criminal laws were drawn. The penalties for violating these laws fell automatically upon the offenders. With the broadening conception of the relationship between the individual and the state, and the duties which one owes to the other, we are no longer content with mere negative enactments, but the trend of modern legislation is in favor of positive and compelling legislation, to regulate the conduct of citizens toward each other and toward the state. So, we have our pure food laws requiring that food products which so largely affect the public health shall be healthful, and their compositions made known to the consumer. We are no longer satisfied to collect large damages from railroads as the penalty for careless operation. Nor are we content that this shall be the only remedy for the maimed employee or for the widows and orphans of those whose lives were sacrificed. But we require the exercise of the highest degree of care by these roads to equip their trains with air brakes, and with the best known modern safety appliances.

We are not willing that our factories and workshops shall expose their thousands of employees to dangerous machinery, or require them to work in foul and unsanitary quarters. So, we have our laws for sanitation and factory inspection.

We long ago decided that it was not sufficient to enact child labor laws, forbidding children to work for long hours at difficult and burdensome tasks, but we found it necessary to supplement these laws, by enacting others requiring the compulsory education of these children. These and many more laws have come to us within a comparatively short time, and have served to revolutionize our criminal codes and change our attitude toward the person whom we call "The Criminal."

In discussing the question: "Who is the criminal?" we must not lose sight of the fact that the majority of the persons brought into our criminal courts today are not criminals primarily because of what they

WILLIAM N. GEMMILL

have done, but rather because we changed our ideas of the relation of the individual to society and the state. It will frequently be found that the communities where law and order reign, and where justice and righteousness most prevail, will have the most criminals, not because the people are more depraved, but because they have higher ideals, and insist upon higher standards of living.

The passage of the Pure Food Law made fifty thousand criminals of persons who before that time, were regarded in the community as good citizens. It was not because these people were any worse that they became criminals, but because the Government of the United States had gained a new conception of its duty toward all its citizens, and that conception compelled it to protect those who were the least able to protect themselves.

When the law was passed a few years ago forbidding the employment of women for more than ten hours in any one day, many thousands of employers were instantly made criminals. Before that time they were as respectable as any in the community. They did not change, but the public conscience changed, when it was made to realize that the burden and stress of long hours of weary employment by women could not long continue, if the race was to be kept strong and virile.

During the last year the writer tried hundreds of cases against men and women who were arrested charged with violating the laws against child labor. Most of these offenders had yielded to the urgent entreaties of mothers to employ their boys and thus give them an opportunity to earn a little with which to buy clothes, and books and other things much desired to support needy homes. Under the law these employers were criminals. Thirty years ago they would have been hailed as benefactors. No one, however, will say that the child labor laws have not been a distinct step in advance.

Before the White Slave Law was enacted many men and women went up and down through our cities, towns and villages soliciting girls and young women, to become inmates of brothel and disorderly houses, but instantly upon the passage of this law, these men and women became the most despised of all criminals. They had not changed, but were doing only that which they and their kind had done for ages past. But the whole American people had awakened to higher ideals, and had crystallized these ideals into law.

In 1912, 15,888 persons were tried in the Chicago Municipal Court charged with misdemeanors, but 8,603 of this number were charged with violating laws that did not exist fifteen years ago. Of the total

## THE CRIMINAL

106,369 persons arrested in Chicago in 1912, over one-half were arrested for violating laws that had no existence twenty years ago.

There are those who profess to believe that the criminal is in a class by himself; that somehow he is different from the rest of society. But through our criminal courts is moving a long line of perfectly natural, healthy, able-bodied people, who have fallen under the ban of the criminal law and, having pleaded guilty of violating the laws, are ready to receive their sentences. What ought these sentences to be? is the most serious question with which the trial judge is confronted.

It might not be uninteresting to inquire who were these 106,369 people; 47,824 of them were arrested on the charge of disorderly conduct. This omnibus charge includes almost everything from spitting on the sidewalk, to attempted murder. At least 20,000 of this number were brought into the police stations in a helpless state of intoxication. They were not criminals, but only criminals in the making. Thousands of them were young men of good families and education. Most of them had steady employment. But periodically on pay-day they saunter forth from their homes or places of business to celebrate their emancipation from restraint and their love for personal liberty. In the morning after they have spent a night in a cell or upon the floor of the station, and have slept off the stupor, they never speak of personal liberty, but amid shame and humiliation ask the court for another chance to be decent. Their request is freely granted, and instead of inflicting the penalty prescribed by the law, the court generally substitutes a few earnest words, admonishing the victims of habit to forever shun the cursed thing which brought them to such a pitiable state. Those who think the drunkards in our courts are tramps, vagrants, and outcasts are mistaken. Most of them are as honest, as industrious and as intelligent as any in the community, but they are all at that stage where in the next step they will either recruit the army of respectable, law-abiding, God-fearing citizens, or the army of the unemployed, the tramp, the vagrant, the outcast and the criminal.

Thousands more of those who are arrested during the year are women charged with being inmates of disorderly houses. The busy world rushes on unmindful of these, content in the belief that they are outside the veil of respectability. But who are they? Do they come from some far-away place, or are they from our midst? Are they all so ignorant, feeble-minded or defective? No, most of them are as intelligent and as sane as the average in the community. But why are they here? The answer is in ten thousand tragedies. In no two of which are the acts the same, but through nearly all of which there runs the story of love, betrayal, disgrace, despair, and then the final

plunge where all may be forgotten. If the community could understand how many of these women are the mothers of babes, whose daily sustenance is supplied by their earnings in these brothels, it would understand how hard it is to inflict the penalties of the laws when such as these are arraigned. Not only has our conduct toward these offenders been foolish, but it has been little less than criminal. The only penalty that can be inflicted under our law is a fine, and no judge ever inflicts a fine upon one of them without feeling that by so doing, he is only driving that bit of human flesh a little harder, and hastening for her the end of all, which at best must come all too soon. In dealing with this problem the whole system of fines should be abolished, and the court be given power to commit these women to some institution where they may receive proper care, and made to feel somehow or other that the star of hope which seemed to have forever set for them will again rise, bringing light and courage with it. This institution must not be one built alone of brick and stone, where in the darkness and the dampness all sorts of diseases may grow, and where the white plague may have a better opportunity to seize and destroy its victims, but it must be somewhere in the open fields under the broad sunlight, with fresh air everywhere, and where flowers and grass and trees and shrubs will grow, and where health and hope may have some opportunity to thrive. No other class of offenders who come before the court are as difficult of reformation as these. It is all the more important, therefore, that they be surrounded by every condition which will tend to make reformation easy.

Among the many arrests each year are thousands who belong to the army of defeat. They are not men and women, but the remnants of them only, from which have departed hope, pride, ambition, courage, self-sacrifice and all those qualities which distinguish the human from the animal world. This army of derelicts is an appalling menace to every large city. They all march under the one banner upon which is written in large letters the word "Failure." They are constantly on the move from Maine to California, and from California back to Maine. In the summer they sleep in parks, under sidewalks and along the wharfs. In the winter they hibernate in cheap lodging houses, where they are stored in tiers one above the other, upon beds of filth, vermin and disease, and from which they go to carry contagion and death to the whole community. The few clothes they wear are foul and ragged. Their weak and emaciated bodies are burned out with drugs and liquor. They are friendless and homeless and hopeless. We send them to the Bridewell because we have no other place to send them. Some of them have been there ten, twenty and fifty times. No place

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could be more unfit for them than these walled enclosures. They are not criminals, they are but driftwood cast upon a turbulent sea, and they have no power to beat back the waves which rock and drive them. Few of them can ever be regenerated or restored, for no foundation is left upon which to build.

In a recent report by a Royal Commission appointed in England to investigate vagrancy and unemployment it is declared that in over fifty per cent of the cases where an epidemic of smallpox or other serious contagious diseases were found, the cause was traceable directly to this class of offenders.

Many communities have already met this problem by purchasing large farms, upon which these people may engage in stock raising, dairying, gardening and the like. In nearly every state where such farms have been provided they have either been self-supporting or have earned a net annual income to the state. Here in the open air, amid natural scenes, and surroundings, many of these abandoned human beings have known to regain their manhood and womanhood without being either a burden to the state or to the particular community engaging them. No more reason exists why these people should be confined behind prison walls than that they should be summarily executed. The state owes to them the same duty of proper care that it does to its feeble-minded, insane and helpless wards.

Two young men on the same day invest \$100.00 of their employer's money upon the stock exchange. One buys wheat and the other sells it. The purpose of both is the same, to gain something without the usual struggle to obtain it. Neither one means to defraud his employer, but both intend to make full return to him. Wheat goes up, one of them goes on to success and often to wealth, while the other goes to the penitentiary as an embezzler. This story is repeated with but few variations almost every day in a large city. Hundreds and thousands of young men, and many older ones, whose employment requires them to handle their employer's money, either under the stress of circumstances, or because they have not clearly distinguished between what is theirs, and what belongs to someone else, are tempted to use the money in their hands, not with the thought of stealing it, but with the intention of replacing it before their employers will discover the wrong. When the tide turns, and they are not able to restore the money to its lawful owner, they are brought before the Criminal Court. If the amount misappropriated exceeds \$15.00, the penalty is a term in the penitentiary. If it is below that sum the penalty is a fine and imprisonment in the House of Correction for a term not to exceed one year.

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Few indeed of these men are criminals at heart. Nearly all of them are hard-working, industrious and generally law-abiding persons. What they lack is moral purpose. Who, in his moments of reflection, will say that the penitentiary is the proper place for these men? They are not enemies of the state, but simply our weaker and more vacillating citizens, whose greatest need is that the state shall more fully protect them from their own weakness. To send them to the penitentiary or the workhouse in no way increases their strength, or enables them to cope more successfully with the problems they are called upon to face. To meet this problem our schools must spend less time teaching compound fractions, compound proportions, and higher percentage, and more time instilling the fundamental principles of honesty and manhood.

The world has always despised a thief. His death upon the cross with the Savior of mankind only emphasized in the public mind the baseness of his character. Yet, there is a wide difference between the real and the imaginary thief. The Forty Thieves of Ali Baba went forth to rob and plunder whomsoever they might meet, in order that they might store up great wealth for the future. But not so with most of our modern thieves. These are generally creatures of sudden impulse, and are moved either by great stress of circumstances, or overcome by a strong temptation against which they have not been trained to fight. They are neither physical or mental defectives, but from childhood their moral training has been neglected. Those who claim that people are born criminals but little comprehend the character of the great number of those who at times have found themselves under the ban of our criminal laws. A child is never born a criminal. It may early be taught to lie, to cheat, and to steal, and the chances are that it will do all of these things, unless it has been surrounded by parents, teachers or associates who will impress upon it certain moral duties which lie at the very base of life. If a child is permitted to grow up without clearly distinguishing between right and wrong, it has a very good start toward a criminal career. Lying and stealing are the same thing. The difference is one of degree only. One always lies to gain some advantage. It may be merely to increase the importance of the liar or to gain greater recognition or social position, but the purpose in lying is always the same, and that is to get something that you are not entitled to. To steal is simply to take something that does not belong to you, and it is very difficult for young men and women brought up amid evil surroundings, who have never learned that to tell the truth is the first law of life, to distinguish between the things that we call simply immoral and the things that we call criminal.

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Truthfulness in childhood means honesty in manhood. With this must go industry, courtesy and punctuality, and all the other virtues which raise up barriers against all forms of temptations that the world presents.

At least forty per cent of the large number of persons brought into the courts charged with larceny are women. Many of these are wives and mothers, whose honesty of purpose cannot be questioned. No day passes in a great city but what many such as these leave their homes and go into the city with no thought of evil in their hearts, but are overcome by temptation, when before their eyes is presented in great abundance, and with lavish display, so many things which they long to possess, in order that they may take their places by the side of others, whom they regard as no better or wiser than themselves, but who because of better fortune are able to make a much more attractive appearance. The more reckless the display upon the counters in department stores the greater the number of those who will be daily brought before the court on the charge of larceny. Among the others whom we call thieves are many young men struggling earnestly against all sorts of adverse conditions to make a living for themselves and their families, but who fail, under a very heavy burden imposed by economic conditions. Many others are employees of railroads and other corporations, who have labored earnestly for years to save a dollar for the future and failed. They have become thieves because the flesh was not equal to the incessant grind of daily toil, unrelieved by moments of leisure and pleasure. I have had many such who have served their employers for fifteen and twenty years, and who had always before been honest, capable and earnest in the discharge of their duty, but who, in an hour of great depression, induced by anxiety for the welfare of the family, have taken from what appeared to them to be the large storehouse of their employers an insignificant part of them. In these cases, if the amount involved is less than \$15.00 the guilty person must be fined and committed to the House of Correction. If the amount taken is over \$15.00 the law leaves no escape; the offender must serve a term in the penitentiary.

In the last few years an earnest effort has been made to avoid the infliction of harsh and unjust punishments. To this end our parole law was enacted, and the trial judge given the power to do real justice to those found guilty of petit larceny. It is inconceivable, however, that an enlightened state should continue to imprison in the penitentiary one whose only offense was stealing sixteen dollars. The distinction in this state between petit and grand larceny should be



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abolished, and the parole law amended so as to include all cases of larceny.

The last few years have witnessed the enactment of many new laws aimed at the punishment of crimes against women. Among them are laws commonly known as pandering acts, the white slave law, and laws to punish those who contribute to the delinquency of children. Public attention has been especially centered upon the first two of these, and the public mind has been aroused to a degree never before known, in its opposition to all acts directly contributing to the immorality of women. In my judgment there is much misinformation abroad as to the number of persons guilty of violating the white slave act, and the number of victims of such persons in our large cities.

In an experience of eight years upon the bench in Chicago, two of which were spent in the heart of the worst police district in that city, I have had before me less than a half dozen cases where an innocent girl was lured into a house of prostitution and there detained against her will. This includes cases arising both from within and without the state. There is no doubt, however, but some cases have arisen in Illinois and elsewhere, where women have been taken from one state into another for purposes of commercialized vice, but these cases are comparatively rare and by no means offer an explanation for the large number of women found in disorderly resorts in the large cities. The White Slave Law, when construed according to the intention of its framers, is a valuable addition to the criminal code of the country, but when construed to cover all forms of immoral conduct taking place in two or more states, it is questionable whether it is not more of a menace than a protection to the community.

The pandering act provides that any person who shall procure a female inmate for a house of prostitution, or who shall cause, induce, persuade or encourage a female person to become an inmate in a house of prostitution, or who shall persuade any female to come into this state or leave the state for purposes of prostitution, shall be guilty of pandering, and upon a first conviction shall be punished by imprisonment in the county jail or house of correction for a period of not less than six months or more than a year, or by fine of not less than three hundred dollars and not to exceed one thousand dollars, and upon conviction for any subsequent offense shall be punished by imprisonment in the penitentiary for not less than one year nor more than ten years.

The purpose of the act is most beneficent. It is often, however, difficult of enforcement. The inmates of houses of ill-fame are nomadic. They wander from city to city, from state to state, and seldom stop long in any place. Like persons engaged in any commercialized busi-

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ness they are constantly on the lookout for new places where they may better their condition. Generally when they leave the houses in which they are inmates, they inquire of the waiters, clerks, cashiers and bell boys in restaurants, lunch-counters and hotels, for more desirable locations. It frequently happens that persons whose sole desire is to help these women in a financial way are brought before the court, charged with having violated the pandering act or by persuading or encouraging them to leave their present keepers and become inmates of other houses. The letter of the law, but not its spirit, has been violated. Its purpose was to punish those who for any purpose induced or persuaded an innocent woman to become an inmate of a disorderly house.

A more serious situation frequently arises where persons are arrested charged with having committed the crime of rape. So severe has been the condemnation of the public upon all of those who have been guilty of this offense, that it is often difficult for the accused offender to secure a fair trial. The age of consent in this state is sixteen years. A bill was before the last Legislature, in which it was sought to raise the age of consent from sixteen to eighteen years. Before any action of this kind is taken the whole problem should be carefully considered. As the law now stands, any man of the age of seventeen years or over who has carnal knowledge of a female of the age of sixteen or under, with or without her consent, is guilty of rape, and the penalty is from one year to life imprisonment in the penitentiary. Some account must be taken of the persons most frequently found guilty under this statute. No regard may be felt for the brute, who would wilfully destroy the life of a child of this age, but less than one out of ten of the men brought into court upon this charge, are of that character. But nearly all of them are boys ranging in age from seventeen to twenty years; most of them pupils of the public schools, or otherwise employed in an effort to aid in the support of the family, who have but casually met upon the public street, or in the parks, one or more of the young girls ranging in age from fourteen to sixteen, who are to be found almost every evening upon the public streets, not in the down town districts, but in the residential parts of the city. But few people realize to what extent some of these girls are a menace to the community. They either have no parents, or have gotten entirely beyond parental control, and walk in the streets at night, endeavoring to attract the attention of boys. They have already lost all sense of virtue and modesty. Their language when brought into court is unspeakable. It is but little wonder that many boys fall victims to the wiles of these creatures. To send boys of this class to the penitentiary would be a crime, committed in the name of the state. To send them to the Bride-

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well would be equally wrong. The law, however, leaves no discretion. What, therefore, is to be done? Certainly the probation law should be made to cover these cases.

While we have been very diligent in the last few years in passing laws for the protection of women and girls, we have entirely neglected the boys. It is not an offense in Illinois for the keepers and inmates of disorderly houses to issue their business cards, and distribute them about the schools of the city. There is no law by which such solicitors may be prevented from debauching and destroying the lives of the boys and young men of the community, and such solicitation has not been infrequent. It should be made a serious offense, punishable with imprisonment, for anyone to solicit, induce, encourage, or admit a minor to a house of prostitution. Nor, should the age of consent be raised, unless at the same time, we raise the age of responsibility for the boys, and make it possible for them, through the parole law, to be given another chance to show what manner of men they will become.

In what has thus far been said about crimes, no mention has been made of the more serious offenses against the person, such as murder, manslaughter, burglary and robbery. But these offenses constitute but a very small volume of the crime in our cities. In 1912 only one case in 1,200 was for murder, one in 2,600 for manslaughter, one in 110 for burglary, and one in 100 for robbery.

With a more or less intimate view of the persons who are continually brought before the criminal courts, we may turn our attention to the other, and perhaps more important question: What ought to be done with these people? It will not be found necessary to go back very far in the history of governments to find the time when there were no penitentiaries and workhouses. Prior to one hundred years ago, prisons were merely places of detention. They were generally built underground and consisted mainly of fearfully damp and foreboding dungeons. The thought of the people at that time was that the more dismal and wretched the prisons, the more fully it performed the function for which it was intended. Its sole purpose was to punish severely those who had broken the law. Into these dungeons all prisoners, without regard to age, sex, mental or physical condition, were thrown promiscuously. Here they were herded together in places that reeked with filth and vermin. Any violation of the rules brought severe and instant punishment, and often death. A feeling of opposition gradually arose against this intolerable condition, and the penitentiary at Auburn, New York, was constructed, the first of its kind in the United States. There was at that time much criticism against those who favored the new kind of prison.

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Often thereafter bills were presented to the legislature, seeking to abolish the penitentiary at Auburn, and to return to the old underground dungeons. At one time a bill was brought before Congress, wherein it was proposed to establish a penal colony at the mouth of the Columbia river, to which all criminals might be banished. Little did the people of that day know what a beautiful and bountiful garden nature had designed at the very spot where they proposed to send these outcasts. Gradually, other penitentiaries were built, and each year saw a change in the general outline and plan of buildings. The dungeons in the penitentiaries were eliminated, dark cells were removed, more windows inserted, and light let in. The same impulse led to the employment of prisoners, in order to relieve them of the long monotony of silent imprisonment. It also led to the building of jails, more commodious and sanitary.

As our viewpoint has changed with reference to the purpose of punishment, we have now become opposed to the system of contract prison labor. Prisoners farmed out to contractors are little less than slaves, held by the state and delivered by it, to cruel and unreasonable task masters. Gradually, as the injustice of the whole system has been impressed upon us, it is being abolished.

A closer study of the problem of crime and its punishment has led those most familiar with the subject to the conclusion that it is not the wisest course for the state or the community that they should annually spend millions of dollars in erecting and maintaining prisons, whose sole purpose is to afford a place where the penalties inflicted under the law may be carried out. From a financial standpoint, the whole scheme of imprisonment has been a failure, and has laid upon the state a great burden of debt. From the broader standpoint of the highest interest of the state, it is still more of a failure. Few persons who have been committed to these prisons for any length of time come out of them better citizens than when they entered. Their physical, mental and moral well-being have generally suffered a shock, from which few of them recover. It is important to inquire whether there is not some better way by which the state may be relieved of this great financial burden, and at the same time the men and women who have violated the criminal laws allowed to work out their penalties in a manner which will not so completely destroy their manhood and womanhood. Many men who are heads of families are daily committed to prison, and their families, left without proper support, become a charge upon the community. When we send a man to the workhouse, and leave behind him his destitute family, without properly providing for its care, we certainly have not strengthened the good citizenship of the state. Many of the families thus left dependent are surrounded by all sorts of evil conditions, and their natural

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trend is toward a violation of the criminal laws. It is of the utmost importance, therefore, that when the state takes away the head of a family it should see to it that from the earnings of such person, while in the custody of the state, there shall be paid to the dependent family at least part of such earnings. Two questions, therefore, arise in dealing with the execution of the penalty:

First: How can the state, in the best and most economical way, care for those who have been found guilty of violating the criminal laws, and upon whom penalties have been imposed?

Second: How can the state best provide for the care of the prisoners' dependent families?

These problems are not new in this country. Many states have been buying and equipping large farms, upon which prisoners, whose crimes are less grave in character, are employed. Here the prisoners work in the open at all kinds of agricultural pursuits. Most of such farms are either self-supporting, or yield a net income to the state, and the health and morals of the prisoners much improved.

The following are some instances of successful operations:

The first convict farms were operated in the South. North Carolina has for many years conducted a farm of 6,000 acres at Tillery, where 450 prisoners are engaged in raising corn, cotton, peanuts, wheat and oats. The annual sales from this farm of produce have for several years ranged from ninety to one hundred and twenty-five thousand dollars per year, being more than enough to fully pay for the entire expense of operating the farm and caring for the prisoners.

Mississippi has had three large convict farms, one of twenty thousand acres at Sunflower, another of 20,000 acres at Belmont, and another hospital farm of 1,200 acres near Jackson. Upon the latter farm the sick and invalid prisoners are kept. Upon the other two farms there are from 1,900 to 2,000 convicts. These farms were all operated at a profit, until the last two years, when the bollweevil made it practically impossible for successful farming in Mississippi.

Georgia has a large state farm for convicts at Milledgeville.

Texas has eleven different convict farms, seven of which are owned by the state; the others are leased and operated by prison labor. These farms aggregate forty thousand acres. Last year an average of 3,696 prisoners were cared for by the state. Of this number only 670 were confined in prisons and 3,000 were engaged in agricultural work upon the various farms. Upon some of these farms workshops have been erected. Nearly all of the farms yielded a net profit for the state after paying all expenses of operation.

West Virginia has a convict farm at Moundsville, containing 250

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acres. The prisoners there are nearly all engaged in raising vegetables and dairying. Last year the farm showed a net profit of \$5,000 to the state.

Alabama has several state farms, one at Wetumpka, and the other at Spergner. While these farms have not proven financially profitable, the superintendent reports that the prisoners have been much more contented and healthy than they were under the old system.

Louisiana has three large farms, one at Angola on the Mississippi river of 8,000 acres, 4,000 of which is under cultivation, another at St. Gabriel of 2,800 acres, another at Janerette of 4,800 acres, 2,500 acres of which is clear and under cultivation. The convicts here are engaged in raising sugarcane, corn, peas and nearly all kinds of vegetables used in the markets. They are also employed in building levees on the Mississippi river and its tributaries. The superintendent reports that since the farm system was adopted, the health of the prisoners has been much better and the death rate much lower. Previous to 1912 nearly all the farms showed a net profit to the state, after paying all expenses of operation.

Delaware has a penal farm of 1,000 acres, from which it has raised nearly all the provisions consumed in its penal institutions.

Arkansas has a state convict farm, consisting of 10,000 acres, which has been operated for a period of 10 years. During that period nearly every year has shown a large net profit to the state. In the year 1913, there was sold from this farm \$165,367.41 worth of farm produce, while the cost of operation was \$61,661.12, leaving a net profit to the state of \$103,706.29.

Florida has two state farms, one at Raver and the other at Ocala, to which nearly all prisoners, that have heretofore been under contract, have now been transferred, a law having been enacted in that state in 1913, abolishing contract prison labor.

The state of Virginia operates a convict farm of 1,300 acres at Lassiter. This has a capacity of 350 persons. The total cost of maintaining the institution for the year 1912 was \$32,924.65. The total receipts from the products raised on the institution's farm during the year was \$29,262.15. The total amount received by the institution from other sources, being for board of prisoners, etc., was \$25,877.76. All kinds of agricultural, gardening and stock raising were followed upon this farm.

In the North the plan of employing prison labor upon farms has recently been given great encouragement. The state of New York has now a large penal farm at Comstock, where it is engaged in carrying on all kinds of agricultural, tree planting, dairying, etc.

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Massachusetts has a convict farm of 1,500 acres at Bridgewater, where men convicted of drunkenness and vagrancy are sent, and employed in all kinds of farm labor; 1,400 prisoners are now kept upon this farm and all that are physically able are engaged in some sort of out-door pursuits. It also has other prison farms at West Rutlands, Worchester, Plymouth and Fitchburg, upon all of which the prisoners are kept in the open air and engaged in some sort of agricultural pursuit.

The Legislature of Vermont in 1913 passed a bill providing for the purchase of a farm, upon which convict labor could be employed. The bill was vetoed by the governor.

Minnesota has given an example of successful operations. Last year the county of St. Louis, in which the city of Duluth is located, purchased 1,000 acres of land, five miles from Duluth, for the purpose of establishing a city work farm. The county and city share equally in the expense of the institution. The farm is under the supervision of a commission of five men, three appointed by the county commissioners and two by the city commissioners. Money appropriated by the city council is turned over to the joint commission to be used in operating the farm.

Since opening the farm on January 8, 1912, many prisoners have been employed in clearing land, erecting camps, building barns and tool sheds. In the winter the men are engaged in cutting logs. A saw mill is just being established. There is much stone upon the land, which will be worked into building material for roads. The general plan of the institution is not to build permanent buildings, but to operate the farm from camps, and after the farms have been improved to the highest possible degree, sell them in the open market, and buy other tracts of land, and repeat the operation.

At Wilmar, Minnesota, the state has established a hospital farm for inebriates. This farm contains 500 acres of good land. The men who are sent here are generally sent for a period of not less than six months, and are set to work in the open, doing all kinds of farm labor. In addition to farm labor some of them do carpenter work. Thus far the institution has been remarkably successful.

Michigan has a farm of 1,200 acres near Jackson, where 100 men are kept. This farm is not only financially successful, but is otherwise proving of great advantage to the health of the convicts who are worked upon it.

Governor Baldwin of Connecticut reports that he has recommended to all wardens of prison in his state that prisoners be kept in the open air as much as possible.

Pennsylvania has just bought a farm of 5,262 acres in Center

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county, upon which it proposes to employ those of its convicts who can reasonably be trusted to work there.

Governor Blease of South Carolina writes that the state has several farms which it has operated for some years, but that the prisoners are now nearly all being sent back to the counties from which they came, to work upon the roads.

The state of Washington has recently established "honor camps" at several points, and the men sent to these camps will be engaged for the next few years in working upon the public highway.

Idaho has just purchased a farm near Boise, to be operated by prisoners.

Oregon has a prison farm, upon which at least fifty men are constantly engaged, and where all the dairy products used in the prisons, houses of correction and other institutions are raised. By this means the cost of maintaining the other prisoners has been reduced to less than six cents per man per day.

The last Legislature of Indiana voted to purchase a tract of land to be used for a convict farm.

Oklahoma has a farm of 2,000 acres at McAlester devoted entirely to the use of prisoners. Out of a total of 1,300 prisoners in the state, 500 are continually worked on this farm without guard.

The farm idea has long been accepted in nearly all European countries.

Switzerland some years ago, by federal law, established labor colonies in all of its twenty-two different cantons. These colonies were of two kinds, one where the sick and unemployed might go voluntarily, and the other where those who were guilty of minor offenses against the criminal law should be committed. The largest colony of this kind is located at Witzwyl, and contains 2,000 acres. There the government keeps its vagrants and other petty offenders who are engaged in reclaiming the land and in general farm work. It has spent \$300,000 upon the plant, which is now worth \$550,000. In addition the farm not only has paid all operating expenses, but has annually paid a net surplus income to the state. Besides cultivating the land, the prisoners make wagons, carriages, shoes, etc. The cost of operating nearly all of the Swiss colonies has been met by the income from them. In addition to the large colony at Witzwyl there is one of 400 acres at St. Johansen, another at Appenzel of 100 acres, another at Berne of 2,000 acres, and two large colonies at Luzerne and Liesthal. The annual cost of maintaining a prisoner in these colonies is from \$60.00 to \$70.00.

Germany has thirty-four separate labor colonies. These accommodate over 4,000 persons. One of these colonies at Vielfeld contains 2,000



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acres. Admission to the colonies may be voluntary, but many persons are committed to the farms to work out minor penalties. That cost per annum for each person in the colony is about \$50.00, and the earnings per annum something less than that. Where detention in these colonies is compulsory it cannot be continued for a period of over two years, and by reason of the fact that many of the inmates are there voluntarily, the average earnings are comparatively small. In the large workhouse at Gros Salze the annual cost of operation and maintenance is \$65.00 each, while for several years the annual earnings of the inmates has been about \$56.00. In another workhouse at Montzburg the annual cost of operation per person was \$66.00, and the annual earnings \$51.00. Several of the workhouses in Germany last year showed a net profit, after paying all operating expenses. This was particularly true of the one at Breslau. The inmates in these workhouses were engaged for the most part in agriculture. Many, however, worked in shops where they were taught all kind of trades. The workhouse for the city of Berlin has connected with it a large farm upon which is continually kept about 2,000 beggars, vagrants and habitual drunkards. Most of these are engaged in agriculture, and for several years the institution has been upon a self-supporting basis, in addition to crediting to the inmates a part of their earnings.

The largest institution in Europe, devoted to the care of tramps, beggars, vagrants and the lesser criminals, is located at Merksplas, Belgium. Here there is a farm of 5,000 acres, upon which is kept an average of 5,000 inmates. The superintendent reports that the great majority of the inmates are there because of drink. They are engaged in farming, in land reclamation, and in the manufacture of all articles that may be used in the colonies, or that may be more readily disposed of outside of them. The annual cost of operation for the last four years has been about \$45.00 for each inmate, but the receipts during that time from the labor of the inmates have exceeded the total cost of maintenance and operation.

Holland has a like institution at Veenhuisen, which contains 3,000 acres and has an average of 3,500 inmates, all of which are engaged in agriculture, forestry and gardening, and were sent to the institution after conviction for vagrancy, public begging or drunkenness. The institution is self-supporting.

It is undoubtedly a great step in advance for the state to remove its prisoners from penitentiaries, jails and workhouses, and employ them upon large farms, where they will be more healthy, and where the expense of maintenance will be much less, and the cost to the state reduced to a minimum. Yet it is still more important that the state shall

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see to it that some part of the earnings of the prisoners, under its charge, in whatever character of work these prisoners may be engaged, shall be paid to their dependent families. Many states have worked out the problem more or less satisfactorily. Among them is Massachusetts, whose legislature, in 1911, passed an act providing that the master or keeper of any reformatory or penal institution, who has confined in such institution one found guilty of deserting his wife or minor child, where such wife or minor child is in needy or necessitous circumstances, may pay over to the probation officer, at the end of each week, a sum equal to fifty cents for each day's labor performed by the person in his charge. During the first year of the operation of this law \$6,831.89 was paid to dependent families.

During the same year the Legislature of Ohio passed a law providing that the county from which a prisoner was sent to state prison should be required to pay out of its general revenue, the sum of forty cents per day for each prisoner confined, who had deserted his wife or minor child, and that this sum should be expended, by such county, under the direction of the county judge, for the maintenance of such dependent wife and minor child. This law was amended in 1913, and now provides that the payment of from two to five cents per hour shall be made to the dependent family for all the time a prisoner is employed during his imprisonment. During the first month of the operation of the new law \$6,931.09 was paid to dependent families. This went to 377 different persons.

The Legislature of California in 1911 passed a law providing that all persons confined in prisons, having been convicted of wife abandonment or of non-support of wife and child, and sentenced to imprisonment in the county jail or elsewhere, should be compelled to work upon public roads, highways, or other public work, and when so engaged the board of supervisors of the county so employing them should allow to the wife and dependent child, at the end of each calendar month, a sum not to exceed \$1.50 per day for each day's work of such prisoner. This law has been practically a dead letter in California, because the supervisors of the counties have refused to employ prisoners upon public roads or upon public work, upon the plea that the cost of guarding them would be greater than their earnings.

The Legislature of Minnesota in 1908 passed a law, providing that the state board of control may pay to the dependent families of prisoners such part of the earnings of such prisoners as the board may deem proper, such earnings to be paid out of the funds provided for carrying on of the work in which the prisoner is engaged, when employed on state account or by a contractor. Under this law the monthly allowance

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to dependent families by the reformatory at St. Cloud was \$480.00 and at Stillwater \$430.00.

Ever since 1898 the earnings of the Minnesota State Prison at Stillwater have exceeded the cost of maintaining and operating that institution. In 1912, the annual expense per capita for this institution was \$215.15, and the earnings per capita were \$396.33. The average number of inmates daily was 769. The total earnings credited to prisoners and paid out by the board of control to their dependent families at Stillwater for the year 1912, was \$36,000, and for the year 1913, over \$40,000. Notwithstanding this payment, the net profit to the state of the prison at Stillwater for 1910 and 1911, was \$215,255.00. Connected with this prison at Stillwater is a farm of 160 acres, and many of the prisoners work upon this farm, where they produce in large part the vegetables, potatoes and other things consumed in the prison.

In 1912 the Legislature of New Jersey passed a law providing that whenever prisoners are employed by the state or by any of its political subdivisions, they shall be credited with a sum not to exceed fifty cents per day for each working day, and these earnings paid to their dependent families.

The state of Washington in 1913 enacted a law, directing that fifty cents per day be paid to the dependent families of all prisoners working in their honor camps.

The Legislature of Utah in 1912 passed a law giving the board of prison control of that state the right to credit unmarried prisoners with a sum not to exceed ten per cent of their net earnings, and married prisoners a sum not to exceed twenty-five per cent of their net earnings, the same to be paid by the board of control to their families.

The state of Texas provided three years ago that ten cents per day should be allowed as a credit to each prisoner, when that prisoner has a family dependent upon him, and shall be paid to the family.

The state of South Dakota in 1913, provided that a part of the earnings of prisoners should be paid to their dependent families, and the amount to be paid was to be determined by the Board of Charities and Correction. Under this law the state penitentiary at Sioux Falls, where there are 216 inmates, has paid out a large sum of money.

Michigan has a law, which provides that the superintendents of prisons shall send to the county poor authorities, from which prisoners are sent, who have deserted their wives and children, the sum of \$1.50 per week for the wife, and fifty cents per week for each minor child under fifteen years of age. Under this law the prison at Jackson paid to prisoners or their families the sum of \$70,000.

The state of North Dakota in 1911 provided that the wardens of

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prisoners may pay a certain portion of the earnings of prisoners to their dependent families, the amount to be determined by the wardens themselves, based upon the condition of such families.

The Legislature of Kentucky in 1913, passed a law giving the state prison the power to pay a certain portion of the earnings of convicts to their dependent families.

The state of New Hampshire in 1913 enacted a law, by which the governor and his council shall decide how much should be paid from the earnings of prisoners to their dependent families, the same to be paid from any public revenue available.

The state of Delaware recently passed a law providing that all men convicted for non-support shall be allowed fifty cents per day when engaged at work, and this shall be sent to their dependent families.

The Legislature of the state of Idaho at its last session provided that the probate judge of each county should cause to be paid to the wife, whose husband is imprisoned, a sum not to exceed \$10.00 per month, when she has but one minor child, and \$5.00 per month for each child thereafter under fifteen years of age.

The state of Oregon passed a law providing that twenty-five cents per day should be paid by the superintendent of workhouses to the wife of a prisoner, and fifteen cents per day extra for a minor child, where such prisoners are engaged in work upon public roads. Under this law last year there was paid by the state the sum of \$10,000 to dependent families.

Last year Nebraska enacted a law providing that one-half of the wages of a prisoner should be set aside, to be paid to his family, if such family is dependent.

The state of Wisconsin has just passed a law which provides for the payment of the earnings of prisoners to their dependent families, after deducting the cost of their keep. In ascertaining the cost of their keep much difficulty has arisen. It is figured this cost will be about \$3.40 per week. The law has not yet been tested.

Pennsylvania has a law providing that prisoners shall receive their earnings after there has been deducted only the cost of lodging, clothing and food. Although this law has been in operation for many years, nothing has ever yet been paid under it.

It was provided by the Legislature of Rhode Island in 1912 that the probation officer might allow a certain part of the earnings of prisoners to be paid to their dependent families.

The District of Columbia offers a valuable experience in the direction of successful farm operation by prison labor.

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In 1910 the Prison Commission of the District of Columbia purchased 1,050 acres of land in Fairfax county. On this farm the district placed its jail prisoners. Since that time buildings have been erected, six miles of road constructed, 500 acres of land cleared, and the institution provided with a water system and an electric light plant.

Since 1910, between 7,000 and 8,000 prisoners have been received at the farm. In 1906 Congress enacted a law for the District of Columbia providing that fifty cents per day should be paid by the prison authorities to the families of prisoners, confined in district prisons and required to work. For the year ending June, 1910, \$30,808.28 was earned and paid to prisoners under this law. In 1911, \$38,648.87 was paid. In 1912, \$39,205 was paid.

The amount paid directly by this institution to dependent families of prisoners has amounted to a little over \$10,000 annually.

Apparently the most successfully operated prison in the country is the Detroit House of Correction. In 1909 the Common Council of the city of Detroit passed an ordinance providing for the payment of a certain part of the earnings of the prisoners confined in the Detroit House of Correction to the dependent wives and children of such prisoners. There was no state law existing at that time touching the subject. The ordinance was as follows:

"On July 1st of each year there shall be paid over to the Poor Commission of the city of Detroit, out of the funds of the institution, the sum of \$5,000, the same to be utilized exclusively by them in aiding the families of such prisoners committed to the institution from courts of the city of Detroit, as may be found in need of assistance, the sum appropriated each family not to exceed \$1.00 for each working day the prisoner remains in the institution."

The act went into effect July 1, 1909. During the first year there was a daily average of 385 prisoners in the institution.

During the first year Superintendent John L. McDonald paid out to dependent families of prisoners \$9,670.00 as compensation for their labor. After paying this amount, and paying all operating expenses, there was a net profit to the institution of \$24,355.87, from which a further sum of \$5,000 was paid by the Prison Board to the Poor Commission of the city of Detroit, to be used by them for the dependent families of prisoners.

In the year 1911 the superintendent of the prison paid out to the dependent families of inmates the sum of \$13,976.70. In addition, \$5,000 was paid to the Poor Commission of Detroit, to be used by it to relieve the distress of the families of prisoners. After making these

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two payments, and paying all operating expenses, there was a net profit of \$15,600 paid by the superintendent of the prison to the city treasurer of Detroit.

Since the prison was established in 1909 it has not only paid back to the city of Detroit all of the original cost of the prison, but has annually paid a net income to the city of Detroit.

In sharp contrast with this is our own institution.

In 1868 the city of Chicago purchased fifty-eight acres of land, at the cost of \$29,000. Upon this ground is now located the city's House of Correction. The average population of this institution, for the last few years, has been about 1,722. The capacity of the institution is about 2,300; and at frequent intervals the full capacity has been reached. The average cost of maintaining the institution per day is about \$796.75. The average cost of maintenance per day per inmate is 46.2 cents. The average yearly cost of maintaining the institution from 1907 to 1914 was about \$300,000.

In 1913, the cost of maintenance was \$308,770.32. The total revenue received from all articles manufactured in the institution for that year was \$82,785.35. It also received from other municipalities the sum of \$78,357.68, for boarding prisoners, making the total revenue of the institution for that year \$161,143.23, leaving a net loss to the city for the year of \$147,627.09.

The brick and crushed stone industries are the most important in which the prisoners are employed. The number employed in manufacturing crushed stone averages 223 per day. The average earning of each of these men per day, based upon the sale of the manufactured product, was only  $4\frac{1}{4}$  cents. The average cost of maintenance per day for each was 46.2 cents per day, leaving a net loss to the city for each of these 223 men per day of 42 cents.

The showing in the brick industry is but little better. During the year 1913, an average of 178 men were engaged in making brick. The average daily earning of each of these men, based upon the sale of the manufactured product, was 30 cents. The average cost of maintaining them was 46.2 cents per day, leaving a net loss to the city for each man so employed in the brickyard of 16.2 cents per day.

The total net loss to the city of Chicago in operating its House of Correction from 1907 to 1913 inclusive, was about one million dollars.

The cost of furnishing the provisions alone for the institution for the year was \$75,662.20.

If, in connection with this institution, there was a large farm of from one thousand to four thousand acres, almost all of the provisions of the institution could be grown upon the farm, and the other indus-

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tries now there might be enlarged and made more efficient, if operated in connection with every form of agricultural endeavor.

In our study of criminology we have always laid the most emphasis upon the question of how to determine whether or not the accused is guilty of the offense charged against him.

More recently psychopathic laboratories have been established in some jurisdictions to aid in determining the legal responsibility of persons who have violated the criminal laws.

The problems of the trial judge are only made more difficult, after it has been scientifically determined that the accused is subnormal and possessed of a low grade of intelligence.

Usually he is all the more a menace to the community if he is of this type, and for that reason must not be set at liberty. He is, however, not insane, and cannot be committed to an institution for the feeble-minded.

All the more reason is therefore presented why there should be a readjustment of penalties, in order that they may be made to fit the particular offender, and that these penalties shall be worked out in a manner that will bring the largest good to the state and to the prisoner.

To this end the following recommendations are made:

1st. The state of Illinois should purchase at least two farms containing from 3,000 to 4,000 acres each, and located nearest to its centers of population. Honor camps should be established on these farms, and a sufficient number of prisoners placed in them to erect the buildings necessary for proper housing; barns for the stock, and workshops for the men engaged in the various industrial pursuits.

The farms should be so divided as to permit the prisoners to engage in all kinds of agricultural work, including forestry, fruit raising, gardening and stock raising.

2nd. Every warden or superintendent of prisons should be directed to pay to the dependent family of a prisoner not less than 50 cents per day for any day such prisoner works, while incarcerated.

3rd. The system of fining prostitutes and inmates of disorderly houses should be abolished, and the courts given the power to commit such persons to an institution where they may receive proper care.

4th. The adult probation law should be so amended as to include within its provisions every crime except murder and treason.

5th. It should be made a penal offense for anyone to solicit, induce or admit a boy under the age of twenty-one years to a house of prostitution, or to a disorderly house, for the purpose of prostitution.

## A HALF TOLD TALE OF SEVEN HUNDRED YEARS AGO.

WILLIAM RENWICK RIDDELL.<sup>1</sup>

In the year of our Lord 1220, Henry III was king of England, a lad of thirteen though he had been king for four years, succeeding his unfortunate father John Lackland—unfortunate in his life, more unfortunate in those who have told his story.

Though the king was a child, he had eminently capable servants; not the least capable, the judges of his bench. One of these has left in mediaeval Latin, inscribed on mediaeval parchment, a record of proceedings in court which even now is of interest.

In Trinity Term of that year, William of Knapwell, the bailiff of Saher, Earl of Winchester, came before the Justices of the Bench sitting in Hertford, and lodged a complaint. The earl himself had gone on a crusade and was to die the same year at Damietta; but he had left much of his affairs in William's hands.

The complaint was that two of the earl's men, Stephen and Philip (family names were not yet common) were conducting a damsel named Matillis (Maud) along the king's highway between St. Albans and Hedge Farm (which lies a little south of St. Albans) on the Tuesday before Ascension Day, when John of Marston came with William, his brother, and some others and by force and arms took away the damsel and robbed Stephen of a cape and a counterpane, two sheets and a scapulary worth half-a-mark or more. All this Stephen offered to prove by his body as the court should consider. The complainant said that Maud was the daughter of Geoffrey of Berneville who held land of the earl, and that Geoffrey had died, so that Maud became a ward of the earl, and that the earl when he departed for Holy Land, left this part of his business to him, his bailiff.

In those days in England (as now in England and Ontario) no man but the king owned land; all inferior holders of land held their lands of the king or of some intermediate lord; and when, (speaking generally) an inferior holder—"tenant"—of land died, in those days his lord had the right of wardship over the infant children left behind. He could sell the infant in marriage; if he tendered the child a match of reasonable equality "without disparagement" the ward must accept or be mulcted in the value of the marriage, (*valorem maritagii*), while if the infant married without permission, double the value was forfeited, at least if a boy ventured to do so. Where the infant had

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<sup>1</sup>Justice of the Supreme Court of Ontario.



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property his wardship was profitable to the lord. Love sounded very well, but business is business.

John of Marston is sent for and gives his account of the transaction, which is as follows:

Geoffrey of Berneville had two daughters, Maud and an elder sister Alice. When Geoffrey died, the earl sold the wardship of the two girls to John of Littlebury that he might marry Alice to his son and heir John, and Maud to a younger son, Saher. Son John married Alice and had already four sons by her, but it happened that a certain church fell vacant, and Saher, preferring church promotion to married life, declined the marriage arranged for him with Maud and was admitted to the church. John, the elder son, did not like to see the property of Maud go out of the family, but desired to retain the whole of the inheritance; and accordingly placed his sister-in-law in the Abbey of Sopwell, intending to make her a nun.

When Maud discovered John's scheme, she found means to send for John of Marston, who came to her at her request. When he came, she told him that John of Littlebury and his friends desired to make a nun of her and that she did not wish to be a nun. She so talked and made love to him (*adamavit eum*) that he married her then and there in the very Abbey.

John of Littlebury came to the Abbey, and when he discovered that she had married, he, with the assistance of some of the Abbot's men, took her away toward the Abbey of St. Albans, of which his wife's nephew was Abbot. As they were thus on the way to St. Albans, John of Marston met them; and when Maud saw him she cried aloud to him and said her enemies were carrying her off by force, that they might kill her or make a nun of her. He said that numbers were against him and told her he would not fight for her; and when she heard this she slipped off her horse and ran after her husband. And that was the way he recovered his wife.

John of Marston went further in his plea. He said that afterwards John of Littlebury came with John of Shelford and others to the nunnery at Sopwell and took there a counterpane and two sheets and carried them off towards St. Albans; one Geoffrey Hopeshot, a man of Maud's, met them, and when they asked him whose man he was, he said John of Marston's and that he was on his way to the nunnery at Sopwell for a counterpane and two sheets. Thereupon John of Littlebury said the bedclothes were his and that Geoffrey was a thief. They took hold of him and bound the bedclothes on him and took him off to St. Albans. There they threw him into prison and

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are actually taking proceedings against Geoffrey for stealing the very same bedclothes they now accuse John of Marston of stealing.

Accordingly John of Marston says: first, that they are taking these proceedings against him for hate and spite (*per odium et athiam*); and in any case the champion they offer, Stephen, is a hired champion, who the very day before, had fought a judicial battle at Huntingdon.

It will be seen that John of Marston was accused of two offenses, the taking away of a ward, and the theft or robbery of certain chattels. The taking away of an heiress without her consent to marry her was made a felony in the times of Henry the Seventh by 3 Hen. VII, c. 2; what the status of such an offense at the common law seems to be doubtful, at all events it was a civil wrong against the lord who had her in ward.

Then he is charged with theft of certain goods, and an appeal of battle is offered by the body of Stephen.

John of Marston puts in issue the taking away of Maud, and says it was her own act; he does not explain the synchronism of her forced journey to St. Albans and his being in the road with his brother and some friends—such things will happen; neither does he explain how Maud was able to elude her enemies who were on horseback when *sponde cecidit de equo suo et secuta fuit eundem Johannem virum suum*.

As to the alleged theft, William of Knapwell could not make an appeal regularly, that could at the time be done only by an eyewitness. The proper form would be for some one who saw the theft and who had an interest in the subject-matter to make the appeal. Stephen might do this for any chattels of his own which were alleged to be stolen, but a hired champion was not allowed in judicial combat. A man might "*pro Deo et non pro denariis*" fight for his lord, an infant, a woman, or an old or infirm man, but if he become a champion for money and this were discovered before the justices, the duel would not go on; he would be tried by a jury and if found guilty he was liable to lose foot and fist. There was one case in Essex in this very year in which one Elias Piggun had been condemned for such an offense to lose his foot and "be it known that by the action of the King's Council he is dealt with mercifully, for by law he had deserved a worse punishment."

Moreover, if an appeal were alleged by the accused to be made from spite (*odium et athia*) this was inquired into; and if it were proved, the appeal was quashed. At the present time it makes not the slightest difference what motive may induce a plaintiff to proceed at

law; his legal rights are not affected by evil motives. In laying a criminal charge the motive becomes of importance if the charge fail and the prosecutor is sued for malicious prosecution.

There were many *indicia* of *odium et athia*, amongst them, a different description of the goods, or of the place of the theft, of the thief, etc., given at another time. And so narrow was the application of that principle that a variance, now of no importance, might vitiate the whole proceedings; e. g., in 1221 Richard Rodeknight of Itchington, charged Richard, Guy's son, with causing the burning of his house. At the County Court he had charged him with burning the house himself, and as the charge before the justice in Eyre was of having procured the burning, the appeal was quashed. In those days *Qui facit pro alium facit per se* was not universally accepted; many a superior escaped while his subordinate suffered the extreme rigor of the law. It may be said that the quashing of the appeal did not prevent the charge being enquired into by a jury. The jury, however, found that Richard Rodeknight's own son had burnt the house.

In the present case John of Marston charged as proving the *odium et athia*, the alleged fact that Geoffrey Hopeshot had been charged with stealing the articles he, John, now was accused of stealing, or some of them.

The earl's bailiff was called on for his reply. He said that while the earl did give the marriage of Alice to John of Littlebury, he did not give that of Maud; he retained the wardship of Maud and caused his bailiffs to place her in the Abbey at Sopwell, and there she stayed until she was stolen in manner aforesaid. He demands judgment, as John of Marston had admitted that he married her without permission of her lord and denies that she ever was married to John of Marston until after he had taken her away by force.

He asserted that Stephen was not a hired champion; that he never was "the man" of any one but the earl, and that the battle he fought was by the earl's command for one of the earl's knights, Adam of Port.

He then makes a departure, and claims that it was from Philip Boiard, the other "man," that the articles were stolen; and Philip offers to fight John of Marston on that issue. Philip also denies that the bedclothes were taken in the way John had described, and denies that Geoffrey ever was taken "*cum pannis, sicut predicum est.*"

John of Marston was then asked by what warrant he married Maud, and he said "by Maud's free will." He challenges the allegation of the complainant that Maud had not been given by the earl to John of Littlebury; and in that view claims that he did not take her

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from the earl's custody, but that she escaped from the custody of John of Littlebury who wanted to make her a nun.

The bailiff reiterates that she was in the Earl's wardship when he left on the crusade, and adds, that having great confidence in John of Littlebury and his wife, the earl entrusted Maud to them that they might place her in the Abbey of Sopwell for safe keeping; and that this is so is very evident because "*idem Johannes nichil [nichil] clamat in illa custodia.*"

It was by this time plain that Maud had been in charge of John of Littlebury, whether as a mere bailiff of the earl as the complainant alleged, or as grantee of her *maritagium* as the accused set up. If the latter were the case, the earl had no cause of action. The judges thought it inadvisable to proceed in the absence of John of Littlebury, and accordingly they directed him to be summoned to declare what right he had in the wardship of Maud and if she was in his custody how she went out of his custody. In the meantime John of Marston was clearly wrong; he had married some one's ward without warrant, and must answer for the wrong. He was accordingly ordered to find sureties that he would "stand to right." He gave two, Richard of Marston and Reginald Taillebois. Had he failed to give good and substantial security the practice would probably have been followed; "*Plegii ejus gaola,*" (his pledges the gaol).

Well authenticated records enable us to say what would be the subsequent proceedings.

If Philip Boiard press his claim and it be determined that it is not taken for spite, a battle will be awarded and a day set. A piece of ground sixty feet square is measured out, appellor and appellee are armed with a staff an ell long; they take the oath to the justice of their claim and against sorcerous protection, and fight from sunrise till one be killed (not a common occurrence), or one pronounce the horrible word "craven," or till the stars appear in the evening—the judges in their robes sitting by to see that all is fair and legal. Indeed, sometimes the king himself desired to see the fight. The year after he came to the throne John commanded the Justices of the Bench that the duels which had been ordered between Ranulph of Launcells and Hugh of Stoddon and between William of Burnsland and Richard of Durham, both cases of robbery, be put before the king himself "*quia ea vult videre.*" If either should be killed, Heaven had given judgment; if the accused be vanquished and pronounce the word "craven" to save his life, he is thereafter infamous, no "*liber et legalis homo,*" disqualified from sitting on a jury or giving evidence as a witness; and moreover he must answer in damages to the man he has wronged. If

it be the accused who fails, who cannot or will not fight longer, he will be adjudged to be hanged immediately; if the stars appear before the fight is ended, the appellee is acquitted.

Then if the robbery of the damsel (domicella) Maud be pursued, John of Littlebury will appear and state his case. If he assert and prove his wardship of Maud, William representing the earl will be nonsuited, the earl having no claim; and William may be imprisoned and almost certainly will pay a fine to the king, being in mercy for a false appeal.

If, however, it be found that the earl remained entitled to the wardship of the damsel, the next question to be determined will be the truth as to the marriage. If John of Marston and Maud duly intermarried in the nunnery of Sopwell, his offense is light, he had a right to his wife, even if she did not run to him of her own motion. But he must pay the damages suffered by the earl; he has given pledges. If they did not so marry, but William is right when he says that there was no marriage until after the fracas on the king's highway between St. Albans and Hedge Farm, John of Marston may find his case rather more unhappy. Then the question of the initiative of Maud in effecting a change of custody would become material. But it is idle guessing what was the outcome, *cetera desunt valde deflenda*.

This story which gives a vivid impression of the condition of matters in England seven centuries ago, is to be found in a publication of the Selden Society, "Select Pleas of the Crown, Vol. 1," edited by the late F. W. Maitland; and the volume contains dozens of cases quite as interesting and many more extraordinary. And yet they tell us "Law is dry."

## A BRIEF REVIEW OF CRIMINAL CASES IN THE SUPREME COURT OF ILLINOIS FOR THE PAST YEAR.<sup>1</sup>

HARRY A. BIGELOW.<sup>2</sup>

During the year from March 1, 1913, to March 1, 1914, the Supreme Court of Illinois handed down decisions in thirty-six criminal cases. In eighteen of these cases the judgment of the lower court was sustained; in eighteen it was reversed, and generally when reversed the case was remanded for a new trial. Among these were eight murder cases, six of which were affirmed, five robbery, of which one was affirmed, three rape, two of which were affirmed, three burglary, two of which were affirmed.

In discussing these cases I shall divide them into two groups, and consider first those cases that involve points of procedural law, and second, those cases that involve points of substantive law. Of course, in many instances, matters of both procedural and substantive law were involved in the same case.

Of the eighteen reversals, it may be said that fourteen of them were for reasons of errors in procedure, using that term in a loose sense. The most important single factor in causing reversals was error in the admission or rejection of evidence. There were six cases in which errors of this kind let the Supreme Court to give a new trial. They were *P. v. Schultz*, 260 Ill. 35, a rape case; *P. v. Newbold*, 260 Ill. 196, indictment for keeping a disorderly house; *P. v. Newman*, 261 Ill. 11, robbery; *P. v. Warfield*, 261 Ill. 293, conspiracy to defraud; *P. v. Harrison*, 261 Ill. 517, kidnapping; *P. v. Pfanschmidt*, 262 Ill. 411, murder. To draw from these cases, however, any inference that the Supreme Court is unduly enforcing merely technical requirements as to the admission of evidence, or following any rule that a presumption of prejudice arises merely from the wrongful admission of evidence would be unjustified. In the *Schultz* case a physician called as witness for the prosecution was allowed to testify as to the condition of the girl upon whom the rape was alleged to have been committed and further to testify that in his opinion it was a case of rape. This latter part of this testimony the Supreme Court held to be wrongly admitted. It pointed out that it is the function of the witness to state facts from which the jurors in turn will draw their own opinion as to the issues in

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<sup>1</sup>Read before the third annual meeting of the Illinois Branch of the Institute of Criminal Law and Criminology, Chicago, May 27, 1914.

<sup>2</sup>Professor of Law, University of Chicago.

the case; and that when the witness in this case was allowed to express his opinion as to whether there had been a rape he was usurping *pro tanto* the function of the jury. The error in the admission of this evidence was accentuated by the fact that subsequently another physician who had also examined the girl and was called by the defendant was not allowed by the trial court to testify as to whether or not in his opinion there had been a rape. In the Newbold case, the Newman case, and the Warfield case the trial court allowed evidence to be introduced of crimes committed either by the defendant or by third parties testifying for him other than those for which the defendant was at the time being tried.

The Pfanschmidt case involved the murder of four persons, two of them being the father and mother of the accused. Among other evidence admitted was the silence of the accused when charged with the crime; since, however, it appeared that he refused to answer because his lawyer told him not to, and also said that he would speak at the proper time, the Supreme Court held that under these circumstances no implied admission of guilt could be drawn from his silence, and the evidence was improperly admitted. The lower court also admitted evidence that a bloodhound had been put on the trail of a horse and buggy in the barnyard of the deceased and had followed the trail to a camp where the defendant had at the time been living. It appeared that the bloodhound had been carried the larger part of the way in an auto, being released only at cross-roads. The Supreme Court not only held the evidence inadmissible in this particular case, but went further and laid down the general rule that "testimony as to the trailing of either a man or an animal by a bloodhound should never be admitted in evidence in any case."

The Harrison case was another case where the lower court admitted in evidence accusations made against the accused in his presence. When the person making the charge finished it, the defendant told him profanely and emphatically that he was a liar. It seems difficult to see how such conduct could be regarded as a tacit admission of the truth of the accusation.

In all the cases just discussed, the evidence properly in the case was either slight or evenly balanced so that the wrongfully admitted evidence might well have been a considerable factor in affecting the verdict. Under such circumstances the court can do nothing but grant a new trial. But where, aside from the wrongfully admitted evidence, the guilt of the defendant is so clearly established that even without the wrongfully admitted evidence the jury would have been derelict in its duty had it not returned a verdict of guilty, the court has not

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hesitated to affirm the judgment. This principle was applied in *P. v. Burger*, 259 Ill. 284, a larceny case; in *P. v. Terrell*, 262 Ill. 138, a murder case, where the lower court erroneously rejected a small piece of evidence offered by the accused; and in *P. v. Duncan*, 261 Ill. 339, a rape case, where in addition to the wrongful admission of evidence the prosecuting attorney, just as one of the defendant's witnesses was leaving the stand, made a motion which was denied by the court, to have her arrested for perjury; and also during the course of his argument to the jury stated that the defendant had been guilty of rape on another girl besides the prosecuting witness. In some six or eight other cases the court applied the well established rule that where there is a fair conflict in the evidence, it will not disturb the verdict.

Proceeding with our analysis of the grounds upon which the various reversals were based: two of the reversals were due to failures by the lower courts to follow the very definite doctrine laid down by the Supreme Court as to the scope of the Indeterminate Sentence Act. In *P. v. Hartsig*, 249 Ill. 348, published in 1911, the Supreme Court explained in detail the relation between the general provisions of the Criminal Code and the Indeterminate Sentence Act. It there held that the latter act was not intended to change the punishment in any given crime as already covered by the Criminal Code, but was meant merely to provide that where, by the Criminal Code, the punishment for any given crime was not less than one year, then the defendant should receive an indeterminate sentence under the terms of the Indeterminate Sentence Act. Obviously, where under the Criminal Code the punishment may be less than a year, the Indeterminate Sentence Act has no application. It was the failure of the lower courts to observe this distinction that was responsible for the reversals in *P. v. Afton*, 258 Ill. 292, and *P. v. Turner*, 260 Ill. 84. The former case was an indictment for incest. The defendant was convicted and sentenced to not less than one, nor more than twenty years imprisonment in the penitentiary. Section 156 of the Criminal Code under which the defendant was convicted provides that the punishment shall be imprisonment "for not more than twenty years," *i. e.*, it may be less than one; consequently under the doctrine of the Supreme Court the case does not come within the scope of the Indeterminate Sentence Act, and the sentence was therefore erroneous. The same error was committed in *P. v. Turner*, 260 Ill. 84.

Among other questions of criminal law that have at various times been made the subject of no little discussion are these: (1) How far should a defendant in a criminal case be allowed to avail himself of procedural informalities in the trial court (a) when it does not ap-



pear that he raised the point in the court below, and (b) when it does not appear that they operated to his prejudice. (2) How far should the doctrine of *stare decisis* be regarded in criminal cases? Without attempting to formulate an answer to these questions, it is interesting to notice the answers suggested by several of the decisions of the past year. In *P. v. Gray*, 261 Ill. 140, the defendant was indicted by a special grand jury for burglary, pleaded guilty, was sentenced and then sued out a writ of error. The record in the case did not affirmatively show that any of the persons summoned as grand jurors appeared in court, that a grand jury was impaneled, that any foreman was appointed, or that the grand jury or any grand jurors were sworn. It did show that on the first day of the term the grand jury came into open court and returned an indictment against this defendant for burglary, endorsed by its foreman "a true bill." The Supreme Court held that while in the lack of evidence to the contrary it will be presumed that the proceedings in the trial court were in proper form and legal, and while certain defects actually apparent on the record may be waived by failure on the part of the defendant to object at trial, there are certain other requisites which as the common law stands must be deemed so fundamental to judicial procedure that they cannot be waived, and one of these is that the defendant must be tried upon an indictment found by a grand jury. Unless the grand jury is duly sworn as such, it is a mere informal organization having no jurisdiction in the premises and it cannot return a legal indictment. This fact not appearing in the case, it was reversed and remanded. The result reached in this case is in accord with common law principles as exemplified by numerous cases cited by the court. Whether it is in the present state of society a desirable result is a different question, and as the court says, one for the legislature to settle.

In *P. v. Annis*, 261 Ill. 157, robbery, the prosecuting attorney in his argument to the jury referred to the fact that the defendant had failed to testify in his own behalf. The trial judge instructed the jury that it were to disregard this. The Supreme Court followed several earlier cases in granting a new trial, regardless of any question of actual prejudice to the defendant.

In *P. v. Stricker*, 258 Ill. 618, an information was filed against the defendant for violation of the act entitled "An act to protect associations, unions of workingmen, and persons in their labels," etc., by selling a bottle of gin to which was attached a label, which label was a counterfeit imitation of a label adopted and used by Tanqueray, Gordon and Co., a corporation. The evidence showed that Tanqueray, Gordon and Co. was not a corporation but a partnership, and the Su-

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preme Court held that for this reason the conviction could not be sustained. The purpose of the statute is not to protect the public against the sale of adulterated or inferior goods, in which case it might be argued that the allegation of whose label was being counterfeited was immaterial. Its purpose is to protect property rights in labels. A corporation is a legal person, a partnership is not; the evidence in this case showed that there was no legal entity known as Tanqueray, Gordon and Co. which owned the imitated label. There were, of course, persons composing the partnership, but who they were, whether Jones, Brown, or Robinson, no attempt was made to show, even if that were possible, so as the case ended there was no evidence as to whose property right it was that was alleged to have been violated.

With another reversal by the Supreme Court on somewhat the same question, it seems harder to agree. The case is *P. v. Smith*, 258 Ill. 502, an indictment for the crime against nature perpetrated upon a young girl. In the indictment her name was given as Rosetta May; upon the trial it appeared that her name was Rosalia May. The defendant was convicted and sentenced; upon writ of error the Supreme Court held, Justice Carter dissenting, that the variance in the names was fatal, and remanded the case. The general rule of the common law is clear that such a variance in names as the present is fatal, at least if objected to by the defendant in due course. In the present case there is nothing in the decision to indicate that any objection on this score was raised at the trial, although it is probable that there was a motion to take the case from the jury or for a new trial. The majority of the court relied upon two earlier Illinois cases, *Davis v. P.*, 19 Ill. 74, and *Penrod v. P.*, 89 Ill. 150. If these two cases are conclusive the court would undoubtedly be bound by them. They are both murder cases and raise the same point, which is this: The defendant is indicted for the murder of, say, "Robert Jones." All the evidence in the case is as to "Jones," his first name not being mentioned. The court in those two cases held that there was no evidence that Robert Jones had been killed, either by the defendant or anyone else, and this is obviously sound. In those cases there was nothing in the record to show that the Robert Jones with whose murder the defendant was charged, and the Jones about whom the witnesses were talking were the same man. It was at least theoretically possible that they were not. In the present case it appeared from the record that the prosecutrix was alive, that she was in court and identified the defendant, that he admitted that she was in his room at the time she specified, and merely denied that he had assaulted her as she asserted; and Justice Carter states in his dissenting opinion that the defendant's bill of

exceptions showed the identity of the complaining witness named in the indictment with the one who testified.

The majority of the court also held as a matter of substantive law that the act committed by the defendant did not constitute the crime against nature within the meaning of the statute, but held that the defendant might be punished under the statute punishing offenses against children under seventeen. There are no cases either way upon the exact state of facts raised by this case, but the inference from the language of the statute defining the crime against nature seems to be that the present case was not within the purview of that statute.

Other errors of procedure causing a reversal which lack of time forbids more than mentioning were: insufficiency of the indictment, *P. v. Hallberg*, 259 Ill. 502, robbery; *P. v. Tait*, 261 Ill. 197, violation of order of Board of Health; *P. v. Boer*, 262 Ill. 152, robbery; conviction for a crime not charged in the indictment, *P. v. Kroll*, 259 Ill. 592.

I have dwelt thus at some length upon the various points of procedural law involved in the decision of the past year because it is to that side of our criminal law rather than to the substantive law of crimes that attention at present seems to be directed. Turning now to some of the cases in which the chief point involved was one of substantive rather than procedural law, these decisions may be noted.

*P. v. Shaw*, 259 Ill. 544 was an indictment for bigamy upon the following facts: Helen Schneider and Edward Olsen were married in Chicago in 1888. In 1889 they separated, he acquiring a home in California and she in New York. In 1892 he got a divorce in the California courts, she being served only by publication. In 1900 she married in New York Shaw, the defendant, both parties believing that she could lawfully contract a second marriage. Shortly afterwards they moved to Chicago and lived together as man and wife until 1910, when Shaw married Lenore Smith, Helen still being alive and undivorced. Shaw was duly convicted of bigamy in the trial court. The case was taken by writ of error to the Supreme Court. There the justices were divided. They all agreed that the California divorce obtained by Edward Olsen was of no effect in New York and that consequently the New York marriage between Helen Olsen and Shaw was invalid. They were divided upon the question as to what effect the subsequent removal to and cohabitation in Chicago had upon their relations. The majority held that it had no effect at all; that Shaw, although he lived with Helen Olsen in Chicago for about nine years as her husband, was not in law such and hence was not guilty of bigamy in contracting a marriage with Lenore Smith. The minority, Justices Dunn and Far-

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mer, held that since the cohabitation in Chicago was at a time when common law marriages were valid by the law of Illinois, their living together here as husband and wife was sufficient to constitute a good common law marriage. It is submitted that the opinion of the minority is both better law and better morals.

There are two earlier Illinois cases, *Manning v. Sparck*, 199 Ill. 447 and *Land v. Land*, 206 Ill. 288, referred to by the minority, where the original relation was regarded by the parties and the world at large as matrimonial as it was in this case, but was not technically legal. In both these cases the spouses continued to live together after the removal of the obstacle in precisely the same way as before, *i. e.*, as husband and wife, and they were held to be legally married thereafter by a common law marriage.

There is, of course, this difference between these two cases and the present case. They were civil; this is criminal. It has frequently been said that in civil cases the court will presume in favor of a relation that makes offspring legitimate and the conduct of the parties legal. On the other hand, in a criminal case, we encounter the well established rule that a man must be presumed to be innocent until his guilt is established beyond a reasonable doubt. Granting the force of this distinction there could be no reasonable doubt in the present case that the defendant, Shaw, and Helen Olsen, intended to have and regarded their relations both in New York and in Illinois as matrimonial and not meretricious. Indeed, the majority of the court do not deny this. They say (259 Ill. 547) "It does not appear that either of them doubted the validity of that [the New York] marriage until after their separation." The court says in support of its decision, "There is nothing which indicates that these parties contemplated or desired a common law marriage, or that they entered into such a contract. Their cohabitation was pursuant to the ceremony of marriage performed in New York." This is true, and as an original proposition it might be argued with no small force that since there was no consensual formation of the marriage relation after their arrival in Illinois no common law marriage was ever created. These observations, however, would be equally true of the two Illinois cases already referred to, in which the court unanimously agreed that after the removal of the obstacle to a marriage, the parties' relations and intentions continuing the same, a common law marriage was established. That neither party in the present case doubted the validity of the New York marriage makes it easier to establish the guilt of the defendant. Had the original relation been intentionally meretricious, it would have required much stronger evidence to justify the conclusion that they subsequently

changed that intent and attempted to establish matrimonial relations.

Several decisions deal with the liabilities of various parties to the crime. In *P. v. Barrett*, 261 Ill. 232, the facts were these: Two brothers, Henry and Edward Barrett, were in a saloon when Henry got into an altercation with a waiter and followed him into another room, motioning his brother, Edward, to accompany him. The latter did so, opening his knife as he came. Henry then urged the waiter to fight, which he refused to do because of the presence of Edward with the knife. A brother of the waiter offered to see that he had fair play, whereupon a scuffle ensued between this brother and Edward Barret, in which Edward stabbed and instantly killed his opponent. The Supreme Court held correct a verdict of manslaughter against not only Edward Barrett, who did the stabbing, but his brother Henry as well. They were both engaged in the common enterprise of an unlawful assault and each was aiding and abetting the other in the carrying out thereof.

In *P. v. Hotz*, 261 Ill. 239, an indictment for murder springing out of an abortion, it was proved that four persons entered into a conspiracy to produce the abortion. The court held that this conspiracy being established, evidence of statements and acts of one of the conspirators in pursuance of the common design was admissible against all, and that if one was guilty, they all were guilty.

With these two cases may be compared *P. v. Turner*, 260 Ill. 84. This was an indictment of a father for incest committed with his daughter. It was urged that the daughter was an accomplice. The Supreme Court held that she was not; that the statute was passed for her protection, that she was regarded as a victim, not as a criminal, and was not directly punishable under the statute; that consequently she could not be indirectly made an accomplice to an act for the commission of which she could not be punished.

## CHARLES GORING'S "THE ENGLISH CONVICT: A SYMPOSIUM."

### I. THE RESULTS OF AN OFFICIAL INVESTIGATION MADE IN ENGLAND BY

#### DR. GORING TO TEST THE LOMBROSO THEORY.<sup>1</sup>

[NO OTHER RECENT RESEARCH HAS ATTRACTED AS MUCH ATTENTION AMONG CRIMINOLOGISTS, BOTH IN AMERICA AND IN EUROPE, AS DR. GORING'S "THE ENGLISH CONVICT." FOR THE PURPOSE OF BRINGING THIS WORK AND THE REACTIONS OF OTHER INVESTIGATORS TO THE FUNDAMENTAL ISSUES THAT ARE RAISED BY IT TO THE ATTENTION OF OUR READERS, WE PRESENT HERE THE CRITICISMS OF THREE ITALIAN CRIMINOLOGISTS. WE EXPECT TO PUBLISH, IN OUR SEPTEMBER ISSUE, THE VIEWS OF AMERICAN STUDENTS.—EDS.]

GINA LOMBROSO-FERRERO.

At the closing session of the stormy Paris congress of 1889, Cesare Lombroso, after having wrestled for a week with some of his most persistent opponents, proposed to have a committee, composed of prominent representatives of the New and the Classical School, study 100 born criminals, 100 persons with criminal tendencies, and 100 normal persons. The findings were to be submitted to the next congress. The proposition was accepted. Lombroso, a member of the committee, promised to retract his theories if the results of the physical, mental and psychological examination of 100 born criminals proved to be identical with those of normal persons or those with criminal tendencies. Reciprocally he demanded that his opponents should acknowledge it in public, if the investigation resulted in demonstrating a difference between normal and delinquent persons. Though his plan was accepted, it was not carried out under the pretext that it was impossible to distinguish between the three classes with absolute accuracy. This so angered Lombroso that he refused to participate in the next congress.

Lombroso's challenge which Manouvrier and Topinard had refused to accept, was taken up a few years later by the director of English Prisons, Griffiths, who was well known for his intelligence, loyalty, and scientific standing. At the congress of Geneva he supported Lombroso's general conclusions on delinquents, especially in regard to prophylaxis; because, he said, certain convicts should never have been committed to prisons nor have been discharged from custody. During

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<sup>1</sup>From Archivio di Anthropologia Criminale, Psichiatria, E. Medicina Legale, Vol. XXXV, Fasc. 1, 1914. Translated by Dr. Victor Von Borosini.

this congress regret was expressed that the famous committee never had taken any action. Griffiths, who was then deputy medical officer of the Parkhurst prison, decided after his return to England to undertake the investigation in his prisons. His work came to the notice of Sir B. Donkin, M. D., visiting director of prisons, and Sir Smalley, M. D., medical inspector of prisons. They most heartily approved of it and encouraged Griffiths to extend his investigations systematically. The importance of the work was increased by placing it under governmental auspices. Some assistants were selected to help in the investigation which was extended to the prisons of Portland and Dartmoor, in which Dr. East and Dr. Foard were physicians.

Griffiths discussed the scope of the investigation with Donkin, Smalley and the persons to whom the work was to be entrusted. It was decided to start in on the first of June with the first person sentenced to prison on or after that date, and to continue until 3,000 individuals had been examined, regardless of whether they were newly admitted prisoners or convicts. Besides Griffiths the regular prison physicians were chosen as investigators. In 1903 Donkin had called attention to the notable scientific work of Karl Pearson, whose biometric had revolutionized statistics. It was decided to make use of the biometrical method in the presentation of the material. Miss G. Jones, assistant in Pearson's biometrical laboratory, undertook to assist and help the physicians in compiling and tabulating the figures. The year 1903 brought many changes in English prisons. Dr. Goring succeeded Dr. Griffiths as director of Parkhurst prison. Dr. Watson replaced Dr. East at Portland and Dr. Pitkairn superseded Dr. Foard at Dartmoor. Though Dr. Goring was opposed to the doctrines of Lombroso and the New School, he loyally continued the work started by his predecessor. He examined and investigated the characteristics of the prisoners, tabulated the material, and drew conclusions from it. Dr. Watson and Dr. Cooke assisted him. Thus friends of the New School began the investigation, and its loyal opponents continued it; this happy combination was the realization of Lombroso's proposal, made in 1889, to have the work carried on by representatives of both schools.

Another important factor: Dr. Goring and his assistants were not urged to hasten the publication of the results of their inquiry. They had ten years' time and then allowed the figures to speak for themselves, even though the conclusions were not what had been expected.

In order to get this result, so different from his preconceived ideas, Dr. Goring examined 4,000 instead of 3,000 prisoners and added to

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the carefully planned schedule a number of pertinent questions. He submitted his report in 1913 to the government, which published it in His Majesty's Stationer Office under the title "The English Convict. A Statistical Study by Charles Goring. Deputy Medical Officer. H. M. Prison Parkhurst." The author explains the purpose of his study on page 18 of the introduction: "Now, although it is true that Lombroso's criminology is dead as a science, it is equally true that as a superstition, it is not dead. There is some quality in it, which has appealed to those imaginations, whose impressions of the criminal have been gained chiefly from newspaper sketches, from the romantic literature of picturesque villains, and from popular pseudo-scientific treatises. To register the extinction of this superstitious criminology, and to lay the foundations of a science of the criminal, truly accurate, and unbiased by prejudice, is the purpose of this investigation."

No book written in this spirit could be considered partial to Lombroso. It should be an inexhaustible source for his opponents, especially for those who want real facts. Instead, the book marks an epoch in the history of the new science and must be considered one of the most important and best arguments in favor of criminal anthropology, which the author tried to refute. Let me say here that, when I noticed that the scope of the investigation had been extended, and that it comprised a careful examination of 4,000 personally visited convicts, I began to read it with the ardour of a disciple and not with the acrimony of an opponent. It never happened that loyally recorded facts had refuted the theories of the New School. How could 4,000 convicts examined by Dr. Goring differ so much from all other convicts as to contradict Lombroso's theories? It is apparent that an opponent has written the book, for he states in many foot notes that Lombroso's theories are erroneous. However, before he began writing against Lombroso he had studied his doctrines and conceded that the master deserved some credit for his sincerity and good faith.

The crude figures, of which works on anthropology are generally full, are in this work, replaced by mathematical calculations gained by placing the crude figures in relation to probabilities of error, which Pearson calculated in his biometric. \* \* \* [Here follows in the original article an extended quotation from Dr. Goring's book: a technical description of the method of obtaining certain mean values and probabilities of error, by Pearson's mathematical formulae.—Eds.]

All possible errors in Dr. Goring's figures, caused by other factors besides delinquency, are in this way eliminated. I must confess that these figures frightened me; being afraid of anything which I cannot comprehend, I naturally distrusted them and feared that these com-



plications might have led the author to false conclusions. Nevertheless, I labored with the figures with the same anxiety with which a mother watches her child at his first public recital. How would our anthropology come out having passed through such a fine sieve? Would these complications not alter the results gained from this highly delicate material? I abandoned for this reason for a moment the study of the figures and began to peruse the conclusions in order to see what kind of conclusions were reached, as I could not foretell them from the figures.

"With our figures we have refuted the doctrine that the type of the born criminal exists; that therefore a human being exists predestined to do wrong, different from other men. Our inquiry shows that he does not exist, the mental and physical constitution of both criminal and law abiding persons of the same age, stature, class and intelligence are identical; but despite this negation and upon the evidence of our statistics it appears to be an equally undisputable fact that there is a physical, mental and moral type of normal person who tends to be convicted of crime. That is to say, our evidence conclusively shows that, on the average, the criminal of English prisons is markedly differentiated by defective physique—as measured by stature and body weight; by defective mental capacity—as measured by general intelligence; and by an increased possession of wilful anti-social proclivities—as measured apart from intelligence, for we find such tendencies in most intelligent recidivists—by length of sentence of imprisonment."

Apart from this, the author concludes the criminal is normal.

We are more than satisfied with this apart and we are convinced that the threatened refutation of the New School is based on ambiguity of words. Before Dr. Goring gives his conclusions he explains at some length that Lombroso was mistaken in calling delinquents abnormal or anomalous, because he believes that the word abnormal ought to be reserved for those who present real abnormalities, such as supernumerary fingers, bifid palates, and so forth, while people whose height or weight differs from the normal are defective, not abnormal. Having ascertained this difference Goring becomes more Lombrosian than Lombroso. He not only admits one but several criminal types. The thief differs from the incendiary; the former is taller but unstable, the latter more lacking in self-control, more refractory in conduct and more dirty in his habits. The thief is more distinguishable by the above peculiarities than the forger, all classes of criminals display these qualities to a more marked extent than does the law abiding public.

The author insists, however, that the difference lies in the constitution, not in the criminality. We absolutely agree with our opponent; I even want to thank him for his wonderful expression of our ideas. Yes, the difference between the normal person and the criminal is

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constitutional. We further subscribe to the author's advice to study the constitution of the criminal in preference to his crime, and approve the following:

"If we select among 13 free individuals the one who is the smallest in stature, the most defective in intelligence, and with highly anti-social proclivities and compare him with criminals we find that he approximates more closely to our criminal population."

We agree with Dr. Goring and thank him for this curious test of which we had not thought. If he must examine 13 persons in order to find one resembling a criminal, and must choose the most abnormal one, this can only indicate that the criminal is abnormal, or defective, which in our opinion is the same. Elated by these conclusions I went back with greater zeal to the figures and tables, studying especially the crude figures with which I was more familiar, and on which I could use my old methods. What a wealth of material for conclusions. Never have I seen such a wealth of wonderfully comforting and useful material. My joy could very well have been compared to that of a child who at Christmas finds his bed so full of playthings that he does not know which one to try first.

*Heredity.*—For instance, the chapter on heredity. Goring has examined 1,428 criminal families, separately, according to the age at which criminal tendencies first appeared (pages 346 and 347). From his study he has with the acuteness of a great student eliminated the women, who contribute to the army of criminals the very small percentage of 6 to 102; their inclusion would have confused the issue.

He compares his figures with those of the normal population and with statistics of the sick, and deduce that criminality is hereditary in the same degree as tuberculosis. The accuracy used in establishing these figures made it possible for the author to dig still deeper and to disclose the latent heredity. He follows the children of criminals until they are 41 years of age with this result:

Mean age of Family	Number of Families	Criminals (Males)	Non-Crim. (Males)	Total
Under 23	43	54	103	157
23 to 30	15	24	31	55
31 to 40	10	16	9	25
41 and over	5	7	3	10
	—	—	—	—
Total	73	101	144	247

These figures reveal that criminal families have a large percentage of criminal sons and that the proportion of criminals is largest during

the first decades of life, though criminal tendencies might also develop later. Criminality is generally greatest at the age of 18; but if conditions are favorable the development might be retarded until the thirties or fifties or may never take place. "In the former case we speak of eventual or occasional criminals." They are not altogether occasional—but rather latent criminals. Criminality breaks out when outside restraining influences have vanished.

Goring affirms that 68% of the criminals had criminal parents, though the different groups show a different percentage. Heredity plays an insignificant role in the case of fraud, while in the case of arson, sexual crimes, stealing and burglary it is from 39 to 46% higher. Offenses of violence, burglary and murder show a maximum of 58%.

"Heredity, continues the author, is not always direct and homogeneous for the same crime. Often criminals of one type have offspring addicted to other types of crime. We have already shown that every 1,000 persons convicted, after trial at the high court in one generation, bequeath at death 770 male offspring who survive to the age of 14, and of whom 33%, or 260, become criminals in the following generation. And we have shown that of every 1,000 persons in one generation, never convicted of crime, bequeath to the next generation 1,230 offspring who survive to the age of 14, and of whom 4.5% become criminals at some time in their lives."

Criminals Convicted of	Offspring of Criminal Parents	Offspring of Non- Criminal Parents
Wilful damage & arson	9 in 178 = 5.7%	95 in 25,191 = 0.38%
Sexual crimes	13 in 563 = 2.3%	117 in 72,437 = 0.19%
Stealing & burglary	4 in 134 = 2.8%	755 in 18,981 = 4.98%
Violence against person	21 in 122 = 17.2%	274 in 17,272 = 1.58%
Fraudulence	4 in 246 = 1.6%	249 in 34,796 = 0.71%
All criminals	33% = 59.6	4.5% = 1.81
Non-criminals	67% = 116.4	95.5% = 168.16
Totals	176	176

All this suggests to Dr. Goring the idea of criminal diathesis. This idea of a diathesis is supported by another table which shows that only in rare cases is criminality limited to one member of the family; it generally is extending to at least two male members of it; hence we find that the percentage of criminal brothers almost equals that of sons of criminal parents, except in the case of sexual crimes, in which the paternal influence is greater than the fraternal.

Grouping the recidivists according to their birth, first born, second

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born etc., the author believes that there is a more pronounced tendency to heredity in the first and second born, than in later born sons. This is possibly caused by the fact that the intensity of individual heredity is greatest in the first born, as all cases of diseases show. He refers to the statistics of 881 normal families in which hereditary tuberculosis and madness prevail among the first born.

"We would accordingly be inclined to attribute the increased tendency of members to be criminally convicted to their possessing in some way an increased intimacy of constitutional criminal taint."

*Environment.*—Most excellent are the tables in which the different influences of circumstances on criminals are enumerated, not so much on those who commit their first criminal act, as upon the recidivists who are "confirmed criminals."

Dr. Goring examines the correlation between crime and social status of the delinquent—between the delinquent and the social status of his parents at the time of the former's birth, at the time of his first conviction—at the time of the present inquiry. Moreover, the social status of the delinquent, his stature, weight, weakness of his body are compared, and the result of the inquiry of many thousand cases is—that there is no relation between the wealth or at least the relative economic prosperity of the family and delinquency, that the connection between crime and poverty is very small, and that finally, in opposition to the general belief, the correlation between crime and the social class to which the delinquent belongs, is insignificant.

"If we limit our investigation to an examination of stealing and burglary, we find," says the author, "that members of the lower class predominate, but if we take crimes like stealing, forgeries and embezzlement, all of which we call acquisitive crimes—this differentiation of class in relation to crime disappears almost entirely.

"Our conclusion is (page 281) that the relative economic prosperity of the family wherein our convicts were brought up, has had no influence one way or the other upon the frequency of their subsequent convictions for crime; but measured by length of imprisonment the influence of poverty, has certainly not tended to increase, but if anything appears to have acted in the direction of diminishing the recidivism of these convicts."

Hence poverty is not only no inducement to the committal of crimes, but is to a certain degree beneficent, because it reduces the recidivism of delinquent poor. From this fact the author deduces that environment has less effect on criminality than intelligence, and as lacking intelligence exerts its influence prior to environment, delin-

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quency is more often caused by mental defectiveness than by environment.

"Moreover, since mental defectiveness is closely related to crime, an easily imagined corollary to this truth is that the mental defectiveness of the convict is antecedent to his environmental misfortunes, rather than that his unfortunate circumstances have been responsible for the mental defectiveness of the convict and his lapse into the crime."

*Profession.*—A slightly greater influence has the occupation, according to the writer not so much on the frequency as on the nature of the delinquency. About the correlation between occupation and crime Dr. Goring gives the following figures:

Occupations per 1,000 committing each type of crime.	Professional Classes.	Commercial—Clerks and Hotelkeepers.	Soldiers, Policemen, Messengers, Servants.	Agricultural Laborers. Railroad Employees.	Sailors—Fishermen.	Miners.	Artisans—Factory. Operatives— Floating Traders.	Total.
Damage to property....	—	58	36	533	58	73	241	1,000
Sexual offenses .....	28	63	71	350	35	126	317	1,000
Violence to persons.....	14	86	104	320	83	61	332	1,000
Acquisitive crimes .....	30	150	42	295	28	28	428	1,000
Frequency of occupation of adult males in the Non-criminal population	44.6	103.6	59.7	324.1	31.6	59.2	377.2	1,000

From this table and from some others we reach the conclusion that arson, damage to property, sexual offenses prevail among agricultural laborers and miners. Soldiers and sailors have a tendency to commit acts of violence upon persons. The commercial classes and artisans commit more crimes against property. The committing of certain crimes depends upon the opportunity offered by the occupation. The professional classes are in a small minority, but when one remembers that only 4% of the total population belongs to this class and that 3% of the thieves belong to the professional classes (95% of all crimes are those against property) "it will be realized not how much but how very little any absolute standard of poverty is associated with the committing of crimes." Rather small correlation is found between the occupation of the criminal and his crime.

From the table in which recidivists are compared relative to the occupation, art, employment at which they were engaged to earn their living, one concludes that criminals who work are recommitted less

frequently than those who cannot work; unemployables show the greatest percentage of reconviotions for short terms, and those who will not work show a high number of reconviotions for exceedingly long terms of imprisonment. Very interesting are the tables which show the inefficiency of education by comparing the recidivists and the schooling they had received.

"Our conclusion is that the kind of school education they may have received has no traceable influence upon the subsequent career of convicts," and that the worst delinquents come from the industrial schools and reformatories.

*Education.*—These tables are highly illuminating. Dr. Goring is convinced that there is no important correlation between the schooling of the delinquent and his recidivism. The number of recidivists is put in relation with the age at which the mother died, and with the education received at home, in school and reformatories prior to the first conviction. All these circumstances have no influence whatsoever on delinquency. On admission to prison, the schoolmaster apportions 11, 8, 6 and 4 as the respective average educational grades of the convicts who subsequently are independently classified as intelligent, fairly intelligent, unintelligent, and mental defective, respectively. In regard to this classification the author concludes that intelligence has a strong relation to crime, while the profit derived from school education exerts almost no influence; hence he is inclined to believe that neither a good nor a bad scholastic education have a greater influence than intelligence. "Which is to say that, on the correlation scale between 0 and one, the small values of these fractions measure the trifling extent to which, not bad, but good education, considered apart from its relation to intelligence conduces in the long run to the committing of crime."

Dr. Goring also attributes very little importance to the lack of education which he proves by a very clever comparison of recidivists and their age at the time of their mother's death. The figures show that this event had no influence on their criminality.

"We conclude that the age of our convicts at the death of their mothers, whether they were infants at that time or had reached maturity, was an environmental accident without any significant relation to their subsequent degree of recidivism."

Instead, he returns with great insistence to the importance of intellectual deficiency. Between the first conviction and the state of intelligence as well as between the age at which the first conviction occurred and later reconviotions there are evident correlations.

"We conclude that undoubtedly the principal factor conducing to the early first conviction of convicts is defective intelligence, but, apart from the intelligence, we may also conclude,

that measuring criminality by frequency of conviction there is no relation between a convict's criminal tendencies and the age at which he is first convicted; and that, measuring the strength of criminality by length of imprisonment or length of sentence, the later in life habitual criminals are first convicted of crime."

By distinguishing delinquents according to the punishment annually inflicted upon them one sees that the mentally deficient receive the most severe sentences. From this Dr. Goring concludes that mental deficiency constitutes the greatest source of criminality.

This statement is followed by a variety of tables in which an effort is made to express in figures the most impalpable tendencies of criminals. The excellent table on page 234 is of great importance to us with its crude figures of the age at which criminals were first arrested. From it we learn that 250,000 prisoners confined in English prisons reported their first conviction as follows: At an age of

10	37865
15	95730
20	48765
25	26405
30	17865
35	8090
40	6630
45	3595
50	2135
55	1685
60	785
65	340
70	110

These figures prove again the precocity of crime. Very valuable is the information on mental defectives. Dr. Goring calls apparently normal persons defective who present a large intellectual deficiency in their memory and appreciation of facts; who forget dates, their friends, the schools they have frequented. His revelations on this group ought to furnish a new chapter of criminal anthropology. He relates on page 254 that the special commission selected for studying feeble-mindedness in prisons found 242 such persons out of 2,353 examined, or 10.28%. Bryan Donkin, the director of one of the most important convict prisons for feeble-minded criminals found between 10 and 15% of the total number committed in all prisons investigated and said that the percentage might even reach 20. This 20% does not include, as Donkin states, offenders under the Inebriates Act amongst whom the proportion of mentally defective persons is over 60%. Against the

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0.45% of defectives in the general population it must be contended that a large number of criminals are mentally defective.

Highly important is the table 100 on page 256 in which Dr. Goring relates the percentage of crimes committed by mentally defective persons.

Crimes committed by mentally defective persons	Percentage frequencies of crimes
Murder and murderous intent. 8.8	0.9
Manslaughter ..... 6.7	0.5
Wounding and intent to wound 5.1	1.2
Striking superior officers..... 0.0	0.1
Assault ..... 15.0	2.5
Robbery with violence..... 7.3	1.2
Burglary with violence..... 16.7	0.1
Stealing ..... 12.5	38.6
Receiving stolen property..... 5.2	1.4
Poaching ..... 11.5	0.6
Coining ..... 2.3	1.6
Arsen ..... 25.0	0.2
Firing of stack..... 55.2	0.8
Maiming (animals) ..... 20.0	0.1
Wilful damage ..... 35.9	0.8
Rape (child) ..... 19.1	0.8
Rape (adult) ..... 5.3	0.5
Indecent assault ..... 39.5	0.5
Unnatural sexual offenses..... 20.0	0.2
Fraud ..... 2.1	4.6
Embezzlement ..... 6.3	0.2
Forgery ..... 0.0	0.6
Fraudulent trustee ..... 0.0	0.1
Bigamy ..... 0.0	0.1
Performing illegal operations... 0.0	0.1
Blackmail ..... 15.8	0.2
Cruelty to children..... 23.1	0.2
Living on prostitution..... 0.0	0.3
Obscenity ..... 46.2	0.2
Begging ..... 20.5	1.2
Offenses under prevention of crime act ..... 15.6	1.5

Interesting in this connection is the table on page 259, because it gives the numbers of mentally defective, unintelligent and intelligent person who commit crimes.



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	Total	MENTAL GRADES			Percentage of Mental Defectives Committing Crimes	General Population Committing the Several Offences
		Intelligent	Intermediate	Defective		
Nature of crime.....	55	21	12	22	40.00	0.406
Malicious damage to property .....	442	256	141	45	10.18	4.180
Stealing and burglary..	101	49	39	13	12.87	0.199
Violence to persons....	183	140	32	11	6.01	1.696
Forgery, coining and fraud .....	167	149	14	4	2.40	0.722
Totals.....	948	615	238	95	10.00	7.203

It is unnecessary to comment upon these figures, because it is evident what enormous importance mental deficiency has on delinquency. Another table on the same page compares defective and normal persons, 12,000 out of 13,000 people are normal and 1,000 are criminal. Of 948 criminals 95 were defective and 853 not defective; of 12,213 non-criminals 56 were defective and 12,157 not defective. All this shows that the anomaly which the author calls defectiveness is extremely rare in England among non-criminals 56 of 12,213, while it is extremely frequent among criminals 95 of 948.

*Fertility.*—The *Archivio* would not offer me enough space, if I should want to produce and speak of all the tables, which this work, a real source of treasures, contains. I want to mention only those which refer to the fertility of criminals.

In order to ascertain whether, in comparison to the normal person, the criminal presents any difference regarding his fertility, Dr. Goring compares criminals and normals at the age of maturity.

Table 121 Page 291.

Ages	Numbers in samples of criminals	Married per 1,000 criminals	In general population married per 1,000
15	40	75	3
20	399	188	174
25	849	330	641
35	477	453	842
45	236	569	890
55	157	599	911
65	94	787	926
	2,252	389	646

From these figures the author concludes that the age at which

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criminals marry and their marriage rate differs from that of normal people. The former is more precocious, the latter higher. Let us now look at the fertility of 203 habitual criminals married.

The author shows by numerous tables that the only difference between the offspring of criminal and normal persons seems to be that the children of the former are more precocious. To explain this phenomenon the writer has thought of several hypotheses, which he illustrates by tables. His conclusion is that criminals are more prolific than normal persons but imprisonment checks their fertility. In table 140 on page 317 he puts the marriage of first offenders and various other conditions in correlation.

	Married	Unmarried	Total
Total in samples of first offenders.....	173	112	285
Employment regular .....	145	87	232
Employment irregular .....	28	25	53
Having been in army and navy.....	36	37	73
Not having been in army and navy.....	137	75	212
Alcoholic .....	67	53	120
Temperate or abstinent.....	106	59	165
Good health .....	138	85	223
Delicate health .....	35	27	62
Good appearance .....	69	31	100
Not good appearance.....	104	81	185

Besides other facts brought out by this table we see that 223 convicts were in good health and 62 in delicate health and 185 do not present a good appearance against 100 who do.

*Conclusions.*—Limited space obliges me to give up the perusal of the tables and to go back to the conclusions, part of which these tables re-assume.

The author surpasses Lombroso.

“The anthropologists asserted that the chief source of crime lies in the personal constitution and in the environment, but our figures show that environment plays no part, but that the personal constitution is responsible for it all. We have traced and measured the relations of conviction for crime in a variety of constitutional and environmental conditions; and while, with many of the former, high degrees of association have been revealed, with practically none of the latter do we discover any definite degree of relationship. Thus, as already stated, we find close bonds of association with defective physique and intelligence; and, to a less intimate extent, with moral defectiveness, or wilful anti-social proclivities. The most intelligent recidivists are guilty of the more serious offenses against property.

"We find, also, that crimes of violence are associated with the finer physique, health and muscular development, with the more marked degrees of ungovernable temper, obstinacy of purpose, and inebriety. We have found that tall persons are relatively immune from conviction for rape, that fraudulent offenders are relatively free from the constitutional determinants which appear to conduce to other forms of crime.

"Alcoholism, also, and venereal diseases, epilepsy and insanity appear to be constitutional determinants of crime—but likewise of defective intelligence.

"On the other hand, between a variety of environmental conditions examined, such as illiteracy, parental neglect, early death of parents, lack of employment, the stress of poverty, etc., etc., including the state of health, delicate or morbid constitution and even the situation induced by the approach of death, between these conditions and the committing of crime, we find no evidence of any significant relationship. Relatively to its origin in the constitution of the malefactor, and especially in his mental defective constitution, crime is only to a trifling extent (if to any) the product of the social inequalities, of adverse environment, or of other manifestations of what may be comprehensively termed the force of circumstances."

Goring, who wanted to refute Lombroso's school, has, as is manifest, dealt a death blow to Manouvrier, Topinard and their school, and to the doctrines of the blind who never allowed figures to speak by alleging that too many circumstances, impossible to foresee, prevent the compilation of serious scientific statistics. Unlike Goring, who cannot be accused of inexactitude nor of prejudice, they were unwilling to examine facts loyally.

Goring's figures not only contradict the school of environment as to the importance of circumstances and personal constitution, but they also refute its attitude towards punishment, because they prove the absolute impotence of prisons to reform convicts.

"Our third conclusion refers to the influence of imprisonment upon the physical and mental well-being of prisoners. We find that imprisonment, on the whole, has no apparent effect upon physique, as measured by body weight, or upon mentality, as measured by intelligence, and none upon morality. Only very little on mortality, which is lower among the prison population than in the general population with the exception of suicides and major surgical operations where it is greater. Long terms of imprisonment militate against the regularity of a convict's life when he is free from prison, but tend to increase the standard of his scholastic education; frequency of incarceration leads to diminution of the fertility of the convict, owing to the circumstances that, after a certain period of continually interrupted married life, habitual criminals are deserted by their wives. They are not regenerated and society is not protected.

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"The fourth conclusion is that delinquents are a product of the most prolific stock in the community and that their apparent diminution of fertility is due to frequent incarcerations.

"The fact that conviction for crime is associated, as our figures have shown, mainly with constitutional, and scarcely to any appreciable extent with circumstantial conditions, would make the hypothesis a plausible one that the force of heredity plays some part in determining the fate of imprisonment. We have seen that the principal constitutional determinant of crime is mental defectiveness—which admittedly is a heritable condition; and scarcely less than 8% of the population of this country are convicted for indictable offenses—which could only be possible on the assumption that crime is limited to particular stocks of the community. If criminality were distributed uniformly every family ought to furnish at least one delinquent or defective. From these facts we conclude that the inevitable genesis of crime and the production of criminals are a phenomenon of heredity.

"The fifth and final conclusion emerging from our biometric inquiry is as follows: that the criminal diathesis, revealed by the tendency to be convicted and imprisoned for crime, is influenced by the force of heredity in much the same way, and to much the same extent, as are physical and mental qualities and conditions in man.

"The scientist, and, insofar as he would be guided by the word of science, the legislator, have to reckon with three factors of crime; the forces of heredity, circumstance and chance. The practical problem facing the legislator is, therefore, this one on the average, and taking criminals in the mass, which of the forces we have enumerated is chiefly responsible for the social phenomenon of crime?"

The author answers this question by asking in turn if it is not heredity and whether crime could not be eliminated from society by preventing all criminals from procreating.

"Our figures, showing the comparatively insignificant relation of family and other environmental conditions with crime, and the high and enormously augmented association of feeble-mindedness with conviction for crime, and its well marked relation with alcoholism, epilepsy, sexual profligacy, ungovernable temper, obstinacy of purpose, and wilful anti-social activity—every one of these, being heritable qualities—we think that crime will continue to exist as long as we allow criminals to propagate."

Here, however, the author shows a little resipiscence, which is very natural for one who started out to refute Lombroso's school. "The crusade against crime may be conducted in three directions. The effort may be made to modify inherited tendency by appropriate educational measures." But how, do I ask? if instruction, and education by the family, the school, the prison, orphan asylums, reformatories have proved to be inefficient and indifferent to modify the delinquent in his

infancy—how can they modify his heredity? In any case Dr. Goring follows Lombroso's ideas after this timid return to himself.

(2) "Modify opportunity for crime by segregation of the unfit."

(3) "Attack the evil at its very root—to regulate the reproduction of those degrees of constitutional qualities—feeble-mindedness, inebriety, epilepsy, deficient social instinct, insanity, which conduce to the committing of crime."

How is it possible, the reader will say, that Dr. Goring, knowing the conclusions he would reach, could entertain the idea of having overcome the Lombrosian superstition? Is it possible that he brings no other arguments against Lombroso? What more he says in his text and by his figures, which he has given in all loyalty, I shall explain as loyally.

His first victory over the theories of Lombroso is nothing but sophistry, as I explained at the beginning. The author blames the master for having called characteristics proper to delinquent anomalies, while Dr. Goring believes that only those characteristics should be called anomalies which never appear in normal persons, like deformed hands, bifid palates and so on. Characteristic deviations from the normal—weight, stature, etc., should be called unusual. For this reason Dr. Goring contends that the delinquent is possessed of unusual characteristics, but not of anomalies and is, we quote from the conclusion, a normal being with physical, mental and moral defects which make him inclined to commit crimes.

The second victory imagined by Goring is that in his opinion he was the first one who recognized the great importance of mental deficiency to which Lombroso had paid no attention. We not only grant this point, but we recognize that Dr. Goring has filled a real gap by calling attention to this highly important fact. Furthermore, we should like to say that these two points instead of being a blow to Lombroso's school, rather make for its victory.

Let us turn to the third objection. Goring declares hehe that he has not found in the convicts many of the physical differences which according to Lombroso exist between delinquent and normal men. I am not able to affirm nor contradict this statement, because many times Goring starts with anomalies to which Lombroso had paid no attention; he also uses different measurements not comparable in any way to the figures I have at hand, especially as I have only the corrected and not the crude figures at my disposal. These latter contains a volume which I have not yet seen and to which I shall refer later. I notice, however, in his conclusions that, judging from many general

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measurements, he shares Lombroso's opinion that the stature of criminals is generally inferior to that of normal persons, especially of those convicted of sexual crimes. Their weight is proportionately less; mean 145 pounds, their height 65.46 inches. With Lombroso he finds the span of the arms greater than the normal. Stature 65.64, span 66.94 inches.

I may recall that in the last table I mentioned that 182 delinquents had not a good personal appearance, while only 100 had a pleasing one. This indicates that Dr. Goring also has observed in three-fourths of the delinquents anomalies which he could not define—the pleasing appearance is determined by the regularity of the features.

Lombroso tried to discover these anomalies in the delinquents because he wanted to prove that the delinquent was constitutionally different from the normal man, and a fact which Goring has demonstrated in an unattackable way. Even if he had proved that some of our anthropological figures were wrong, or erroneous, I would not hesitate to declare that this work is altogether the most important document of criminal anthropology which has appeared during the last years in support of the new school. For this reason, we advise every disciple of criminal anthropology to study it.

We accept the normal man of Dr. Goring with physical, mental and moral defects which make him inclined to commit criminal acts; and we hope that Griffith's initiative, for which we cannot be thankful enough, will soon be imitated in other countries; and that elsewhere may be found opponents as loyal as Goring. We want to thank him in public, full of admiration for his splendid work, for his patience, his exactness and the subtlety with which he has collected these figures. Ten years of laborious work seem very little when we consider the immense task he has accomplished.

## II. THE PRESENT MOVEMENT IN CRIMINAL ANTHROPOLOGY APROPOS OF A BIOLOGICAL INVESTIGATION IN THE ENGLISH PRISONS.<sup>1</sup>

ENRICO FERRI.

The publication of the article under the above title was inspired by the appearance of "The English Convict; A Statistical Study," by Charles Goring, London, 1913. Professor Ferri here deals with the everlasting misunderstanding of the doctrines of the Positive School.

"The conclusion of Dr. Goring," says Ferri, is this: the criminal is not a creature *sui generis*, an abnormal man; he is simply an 'unusual' person, of normal humanity. It will be seen that here is much ado about nothing. Whether you call a person abnormal or unusual indicates simply a verbal preference. The fact that the investigation of Goring and his associates establishes, as they maintain, that 'criminals are generally persons more deficient than the average of the population; deficient in physical form, in stature, in weight, and in mental capacity,' shows that the contentions of the positive school are corroborated by persons who call themselves opponents. The opposition seems to be due to misunderstanding." Ferri attempts to explain once more, as lucidly as he can, what the positive school believes.

"It is advisable to note that the very fact that this investigation in the state prisons has been carried on—though it has been limited to only 3,000 convicts—is such a tribute to the Italian school, which Cesare Lombroso founded, as to make us grateful to the English government for having ordered such a compilation of biologic data on prisoners. Another reason for satisfaction lies in the fact that Goring's volume resembles even in the typographical disposition of the numerical tables and the diagrams, the principal Italian works on criminal anthropology written by Lombroso, by Marro, etc.—and especially my own volume on "Homicide" (including its maps), which volume Goring does not cite, but from which he reproduces arrangement and classifications, beginning with the method of series, which I then brought into criminal anthropology for the first time in substitution of and in complement to the method of means.

It is strange that now after trying many years to bring about a

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<sup>1</sup>From *La Scuola Positiva*, November, 1913. Translated and presented by Robert Ferrari, Associate Editor of this Journal, New York city.

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proper understanding of the phrase, "born criminal," I should have to repeat for the benefit of Dr. Goring, the same things that I have been saying for the last thirty years, and which I published in the first editions of *Criminal Sociology*, pp. 80-194, in the 4th edition, 1900, and in "Homicide," pp. 97-110. I must repeat for the thousandth time, what I said at the International Congress of Criminal Anthropology of Paris, 1899; and above all, in that of Geneva in 1896. If Lombroso had laid stress exclusively on the organic characters of the criminal—indeed the anatomical characters and almost solely the cranial ones—and had thought that crime was purely a biological phenomenon, he very quickly acceded to my views as to the bio-social origin of crime. Insanity, suicide, etc., are not the exclusive effects of anthropologic conditions, physical and psychical, of an individual, but are the resultant of personal conditions, that react in a given telluric and social environment. And so, at the Congress of Paris, and at that of Geneva, I openly explained the objections of the so-called French school to the doctrine of the born criminal as the result of a misunderstanding, in so far as they attributed to Lombroso and to the Italian school, the belief in a physical-criminal type; just as in these days Dr. Goring still attributes to our school, that is, such a type by virtue of which a man who presents certain stigmata of degeneration or of disease, without more and because of the stigmata, is compelled to commit crime. I explained how a man may have stigmata of abnormality, degeneration, and disease, and notwithstanding, not commit crime, if he has the fortune to live in surroundings and conditions which do not push him on to crime. Just as, on the contrary, there are criminals who do not present any degenerate or morbid stigmata, or, rather criminals in whom we cannot make stigmata out, during their life, and sometimes not even on the anatomical table, because of the imperfect state in which even today our researches and above all our microscopic and biologic researches are.

That between the two classes of criminals, the sanguinary and the fraudulent, or the thieves who are not violent, there are, in general, somatic differences, I also showed in these congresses. And this is deduced from the data of criminal anthropology. But it is also to be understood that these somatic and psychical stigmata must be taken in connection with the environment.

When it is said that certain criminals observed by Tom, Dick or Harry do not present anomalies, it is necessary to remember that the observations have a greatly problematic value, because they are subject to the question: did the person who observed the criminals have such notions and such practice in anthropologic observations as to discover the



anomalies which the individuals may really have had. But I say that even when physicians and psychiatrists examine criminals they do not have a sufficiently trained eye to detect stigmata of degeneration if they have not studied anthropological technique.

In order to confirm this statement I have but to bring forward an episode which occurred at the Congress of Criminal Anthropology at Paris in 1889. In one of the last sessions, the celebrated Magnan invited the members of the congress to visit his famous asylum of St. Ann; and he told us that he would show us boys and girls, amoral or immoral, but without organic stigmata of degeneration. Of course if an amoral person does not present visible anomalous characters, as for instance, assymetries, irregular forms of the cranium, of the face, etc., this would not destroy criminal anthropology as some believe it would, since the anomalies may be internal or not macroscopic. But when we were at the Asylum of St. Ann, and Magnan showed us those boys, whose portraits can be seen in the transactions of the congress at Paris, pp. 55 Seq., he repeated that they were innocent of physical characters of degeneration, anomaly or disease; and since, to look at them, they were boys whose faces were rather attractive, the members of the congress were much impressed. But see! Lombroso rises and walks toward these boys (I can see him yet, trembling all over with the tremor of a good bloodhound close to his quarry), and begins to examine them. He found in every one of them sundry and not trifling anomalies, although these anomalies were invisible to the inexpert— anomalies which other anthropologists present, like Manouvrier and Popinard, were forced with mortification to admit the presence of, upon their being pointed out by the master. Lombroso thus overthrew the opposition of Magnan, who was a celebrated alienist, but who was an incompetent anthropologist.

When, therefore, in the year of grace 1913, Dr. Goring, perhaps forgetting all that has been said in the international congresses and in the works on criminal anthropology about organic and psychical anomalies of criminals, repeats that the criminal is not an abnormal person, but an unusual person, he quarrels only with words, and knocks down men of straw, while he believes that he is demonstrating the non-existence of an organic anatomic type of criminal. When, however, Dr. Goring comes to the conclusion that criminals are "more deficient than the average of the population in organic form, in stature, in weight, and in mental capacity" (not questioning for the time being the exactness of these particular affirmations, concerning which I should make some reservations—especially as regards stature), crim-

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inal anthropology, evidently, instead of being destroyed, receives from his conclusions the most impressive and positive confirmation.

Criminal anthropology progresses, and there is no doubt that the future will see more improvements and further discoveries. But there is an abyss between this perfection of methods (as was the addition of the method of series to the method of means) and the pretended destruction or "vanishing" of the "born criminal," or better, of the fundamental data of criminal anthropology, a science which Lombroso founded but which cannot and ought not to be bound by every particular conclusion which Lombroso has announced on this or that problem of criminal biology.

The results of the English prison investigation come, then, in good time to give us new material, and that revision of the particular conclusions of criminal anthropology which is the inseparable condition of progress in every science. The study of criminal anthropology will continue. It cannot help but continue, since the existence of criminals with their organic and psychical characters of abnormality or atavism, or degeneration, or disease is a daily reality. The scientific study of the criminal, therefore, with the method of experiment and observation, cannot die. Instead, the science will become more vigorous, especially because in our universities the authorities are adding those schools of applied juridical-criminal sciences, which cannot help but make a clinical study of criminals.

### III. AN INVESTIGATION OF ENGLISH CONVICTS AND CRIMINAL ANTHROPOLOGY.<sup>1</sup>

#### SANTE DE SANCTIS.<sup>2</sup>

The recent investigation of English convicts deserves the attention of sociologists and criminologists. It will be unsatisfactory to limit myself to a critical review of the general conclusions of the author, and I shall therefore discuss this work at some length.

Although the number of the subjects which form the material of this ponderous statistical investigation is relatively small, since only 3,000 English male convicts are studied, nevertheless this patient and conscientious labor of eight or ten years has indisputable value for criminology and criminal anthropology.

Looking over this volume of research work you immediately become aware that Dr. Goring is animated by a polemical spirit. He invests himself in a certain air of challenge, from the first words of the introduction; so much so that he arouses in the reader the desire to stand on guard. Indeed, such an attitude cannot come in aid of science. Serenity and modesty should characterize every scientific work. But Goring seems to have an anti-Lombrosian obsession. Over and over again he calls the criminology of the Italian School a "Superstition." He believes he has caught Lombroso in error because of certain words Lombroso used at the Congress of Turin in 1906. And what is worse, Goring confesses that the object of the English investigation was to batter down the "superstitious" criminology and to lay the foundations of a science of the criminal truly exact and unprejudiced.

If the author had obtained unexceptionable and decisive results against the Italian School, and if he showed that he had an exact and complete knowledge of all the Lombrosian criminologists, he could be pardoned for having as his object the destruction of the Italian School. But, alas, it is not so. What value, for instance, has the criticism which he makes of recent books, like those of Pauline Tarnowsky, of Maurice Parmelee, of G. L. Ferrero, when he has not taken the trouble to read "Criminal Sociology" and "The Homicide," both by Ferri, nor Criminology by Garofalo?

But there is a truly significant fact: the author in the introduction assumes as a preliminary hypothesis, the *criminal diathesis*, and de-

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clares that his work is not against the conclusions of the Lombrosian doctrine but against its methods. We feel like asking ourselves if it is worth the trouble to strike the attitude of a savior of truth by taking a position against any positive science of crime.

In the introduction the author, as I have already said, combats the continental or positive school, and compares the Lombrosian criminology to alchemy, to phrenology, to chiromancy, to physiognomy; but he does more: he denounces as anti-scientific every one of the three schools of penal law, namely, the classical, the correctional and the positive. Feeling convinced that it is a great prejudice to believe that the internal disposition of a man is reflected and revealed in the configuration of the body, he depreciates the anthropological and anatomical pathological characters of criminals, which are indicated by the Lombrosian, takes indeed all merit from the descriptive methods, and maintains criminological science can be based only upon the statistical method. The thesis seems somewhat audacious.

The word "criminal," according to Goring, can be taken in a legal sense and in an ethical sense. Only the legal sense is a scientific reality. The abnormal is a qualitative variation of the natural, while the "unusual" is a quantitative deviation. Unusual indicates only the variety of a thing; abnormal, on the contrary, indicates the non-natural and the morbid. The passage from the normal to the abnormal is rapid, and is not accomplished by means of transitions. So that crime is defined as an unusual action committed by a person who is perfectly normal.

In a short while we shall see that the results themselves of the investigation militate against this definition.

In treating of criminals in the legal sense, the author does not set out from any presupposition regarding the nature and essence of the criminal. Indeed, he excludes every preventive theory of criminology. On the contrary, he stands on the hypothesis of the possible existence of a group of characters common to all men; a group of characters which he calls criminal diathesis. This diathesis implies a hypothetical character, that is, a constitutional tendency, mental, moral or physical, which is present in a certain quantity in all individuals. The diathesis is not proved directly, but is revealed only by the phenomenon of crime, to which those who break the laws are determined by a combination of factors.

This is the gist of the introduction. Let me make a brief criticism:

The author may have good reasons for denying that certain morphological characters, which are considered peculiar to criminals, are indicative of criminality. Such a denial has often been made in Italy,

but it does not destroy criminal anthropology. We can easily understand the inexactness, and the over-enthusiastic interpretations of the beginnings of the science, if we consider the state in which psychiatry was thirty years ago. The Darwinian theory of evolution, on the one hand, and on the other that of degeneration, held by B. Morel, were at that time dominant in psychiatry all over the world, and all the results of scientific research were brought to the touchstone of those theories. There is no science whose history does not record puerilities, quickly formed conclusions, unjustified hypotheses and immature doctrines.

But it is not necessary to show that, in spite of these defects, sciences advance and that, in particular, the Italian school of criminology, based upon criminal anthropology, formulated a body of doctrine, which, if you will, is discussible, but which is dignified and exact. To say that our criminal anthropologists have worked in the realm of phrenology, of physiognomy, and similar things, is gratuitous injury, since a characteristic of criminal anthropology was and is the universality of investigation. The Lombrosians did not limit themselves to the head, or the face, nor even only to an investigation by observation and measurement, of all the parts of the body, external and internal; nor only to the gross and histological morphology; but they insistently pursued their studies into the moral and psychical spheres also. This is so true that not only Lombroso and Ferri, but all their pupils, especially, for example, Patrizi and Sighele, have discussed criminal psychological, rather than morphological, problems. And it is well to add that, according to the Italian criminological school, the word "anthropology," in the phrase "criminal anthropology," was always understood in its wide sense, that is, in the sense already accepted by naturalists and philosophers of by-gone times, as meaning the natural history of man, in his physical and mental aspects. That to-day psychology is a science distinct from anthropology, and that when we speak of anthropological characters we mean somatic characters is certain. But Goring was bound to know the meaning and the function of criminal anthropology assigned to the science by the Italians. Instead, he set up a man of straw to give himself the pleasure of knocking it down.

We all find it very easy to criticise the construction of an *average physical type* of criminal. Dr. Goring would not have insisted so much on that if he had known that Italian criminologists of the positive school have for some time abandoned that construction.

And now we come to methods.

We may agree perfectly with the author that if the construction of a criminal type were possible, that construction could not be made

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by means of descriptions and percentage calculations only, but we should have to call in aid more modern statistical methods.

No one will deny that in these last decades the whole of scientific methodology has been perfected, I had almost said, refined. This is due to the fact that serious scientists have abandoned philosophical questions, and doctrinal prejudices in the field of the sciences and have confidently come back to methods of measurement. I do not doubt that with the refinement in methods, even criminal anthropology may gain, and disembarass itself of sufficiently encumbering baggage of facts gathered in a little haste in times of enthusiasm. But this does not mean the destruction of everything which has been done. Even psychology, in these latter years, has helped itself by using statistical methods; but it is still to be seen whether the so-called "correctional" psychology is capable of destroying the work of descriptive psychology.

The author looks at crime from the point of view of law. This was inevitable from the fact that he proposed to apply to the study of crime the statistical method only. How could he apply it to those who, although they are criminal in tendency, do not commit crime? But the science of criminal anthropology being, by definition, genetic, cannot be exhausted by the statistical method, but must investigate with all the other methods which individual psychology demands, the origins and the formation of criminal tendencies even in those who have not committed punishable acts, or who in whatever other way have escaped penal sanctions.

But, in order that we may not return to the subject again, it is well to say now that the Italian criminologists also believe in statistical methods. Goring might have consulted the works of E. Morselli, of E. Ferri, of R. Levi. Morselli, for example, back in 1880 contributed to the wider use of the serial method, and maintained the superiority of series over means. Later Ferri applied this serial method in his "Homicide." I may add, moreover, that the methods adopted by the author are exactly those which Niceforo (cf. Vol. XVI and Vol. XVII of the *Rivista di Anthropologia*) had maintained were necessary in criminal anthropology, namely, the calculation of the mean error, and correlations. There is nothing wrong, then, in placing great faith in the statistical method. But between doing this, and saying with the author, that the study of heredity ought to be based entirely upon statistics, and that only the statistician, and not the biologist, can discover the facts of heredity (p. 33) there is a great difference.

However that may be, the statistical method produces good results only on condition that the facts be gathered by rigorous and uniform means, and by competent persons. Now, while in regard to the English

investigation, we have no doubt of the exactness of the exposition of the facts, we cannot say so much for the manner of collecting them. The author is too brief on this important point. It is necessary to know how many persons gleaned the facts, and whether all of them used the same technic to glean them with.

The investigation was such that the statistical method could be easily applied to the results. But it must be noted that in several places, regarding the psychical characters, the table which the author provides is lacking in some things, and is ambiguous.

For these reasons the deductions from the numerical tables should have been made with great circumspection. The author was, however, impatient to finish, and so without more ado he carries the statistical deductions in regard to English convicts over bodily to criminals in general without regard to nationality. That is strange. The investigation contemplated the English convict; the author always insists upon the purely legal signification given by him to the term "the criminal"; and yet, right through the book, in the introduction, and in the conclusion, Goring speaks only of the criminal and identifies the *English convict* with the *international criminal*.

Let us go on with our analysis.

An essential point in the work of Dr. Goring is the meaning he gives to the terms *abnormal* and *unusual*. To say that crime is simply an unusual action is just from the objective and statistical point of view. It may be insufficient, however, when it is applied in an investigation of individuals. The distinction which the author makes between normal and abnormal seems to be entirely arbitrary. No pathologist has as yet determined the limits between the state of health and the state of disease. No psychiatrist, *à fortiori* has ever marked out the boundaries between normality and abnormality. All of us have heard speak of twilight zones, of zones intermediate between soundness and insanity. Where, then, does the quantitative variation end, and the qualitative begin?

I understand that certain distinctions are currently made for convenience. But we must not abuse them too much. Indeed, how many unusual forms, from the statistician's point of view, how many extreme grades of stature, of weight, of cutaneous sensibility, of psychical characters, must not truly be abnormal and pathological. It is enough on the one hand to consider the stunted forms of infantilism, of gigantism, disgenitalism, and on the other, the great tolerance to cutaneous pain of certain abnormals, to light, the more or less periodical diminution of the psychical tension, and so on.

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A few of the particular statistical results of the author do *not* agree with the descriptive results of our own criminal anthropologists. Making the necessary reservations in regard to certain particulars of the method, we have no difficulty whatever in accepting the corrections which the anthropometric results of the investigation prescribe. It was inevitable that the more modern ways of procedure by the statistical method, should conduce to results different from those of the descriptive method.

Notwithstanding this, the general result, insofar as it relates to somatic characters, represents a truly important contribution to that criminological science which Goring wished to deny in advance. The English convicts, according to the investigation, were in their whole make-up, physically inferior. They differ from the common population in respect to stature and weight. Well, now, this is statistics; but it is also criminal anthropology. In order to make the opposing thesis true it would be necessary to admit that physical weakness and crime according to the results of this investigation are connected only casually.

But the author argues that this is a general result which does not distinguish among those who are guilty of different crimes. And yet, he says, for example, that thieves, especially, are small and weak of body; that persons of high stature are very rarely convicted of rape; that persons guilty of fraud are relatively free of those physical constitutional determinants which conduce to other forms of crime; that persons guilty of crimes of violence have physiques which distinguish them from thieves, and so on.

All this is something. Indeed, it is even too much for him who, like me and the majority of people, has never been persuaded that there corresponds to every kind of crime a somatic type of criminal.

But we are interested to consider above all what are the mental characteristics of the English convict. Here we are on ground much less firm than that of anthropology. Dr. Goring himself recognizes that deductions of a psychological kind have much less value than those of an anthropological quality. The statistical method must be applied with great caution in psychology. But all the caution in the world is inefficient if the gathering of the data is not made with rigorous method. In every case the respect with which psychological deductions will be received will depend upon the method used in the gathering of the facts.

The author deals with the following characters: (1) temperament: (a) suspicious (of three grades); (b) sanguine (sanguine, intermediate phlegmatic); (c) satisfied (satisfied, intermediate and unsatisfied); (d) egotistical (egotistical, intermediate and sympathetic). (2) Temper:



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good or amiable temper, bad temper, etc. (3) Facility (tractable, obstinate or intermediate). The judgment concerning these qualities is based upon impression got from several months of contact with the criminal. (4) Conduct. Judgment of this is based on reports during one year of imprisonment. (5) Suicidal tendency. (Computed with suicidal attempts.) (6) Psychopathic diathesis (indicated by the number of admissions to asylums).

This part of the schedule leaves much to be desired. This is an investigation in the domain of popular psychology, not in the domain of scientific psychology. And yet the author could have had before him various "psychographic" schemes proposed, for example, by Stern, by Lizurshi, and by others. And, then, is temperament a psychologic datum? So that the psychopathic diathesis computed on the basis of the number of admissions to asylums excessively restricts the character which we wish to find in the convict. Every one knows that the inmates represent only that small part of psychopathic persons who have proved socially dangerous.

Notwithstanding this, the result is that the convicts, even in respect to the above mentioned characters, deviate from the common type. Only the author finds, or rather deduces with the aid of the statistical method that the psychical differences among convicts do not correspond with their crimes, and that, therefore, we may deny a *criminal* psychical type. But they do correspond to a difference in *general intelligence*. In short, the author does not admit that criminals are mentally equal to average men. He simply notes that they are not differentiated from others in England except by general intelligence. In brief, the psychical characteristics of the convicts are correlated to a defect in mental strength. The author uses the phrase "mental strength," but he often employs the term general intelligence without, however, taking the trouble to tell us what he means by this term, which is among the most debated in psychology. Is it the general intelligence of Spearman? Is it that of Thorndike? We cannot tell, though it was necessary to have some explanation.

In order to make his correlations, the author divides the convicts into (1) intelligent, (2) little intelligent, (3) mentally weak, (4) imbeciles. The difficulty of definition, especially in regard to the little intelligent, must have been very serious. Between these and the weak there cannot be any clear boundary; the transitions are gradual. But the author does not tell us how the intellectual level of his convicts was measured. It may be that in this point also he followed popular psychology; that is, he judged by impression. It is very strange; since

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today it is the statisticians themselves who demand of psychologists the determination in figures of the intellectual level. I do not mean to affirm that the various means, which we have to measure intelligence, are perfect. But between these and impressionistic judgments there is no question about our choice. In France, and more so in America, the metrical scale of Binet and Simon is commonly applied even to criminals. And in our own School of Applied Juridical and Criminal Sciences the determination of this level of intelligence makes the subject of lessons and of experiment. At any rate, the fact is, according to the author, that the fundamental character of the English convicts is mental deficiency. B. Donkin in 1910 in one of his Harvian Orations came to the same conclusion.

Now, it seems to me, either this result is of extraordinary importance for criminal psychology, or the author speaks a language which I do not understand.

Two conclusions seem to be clear (p. 252): "(1) Criminals mentally deficient do not form a special or qualitative race of men but form only a conventional class that consists of individuals distinguished for their lower level in the scale of intelligence and whose average intelligence is in consequence lower than that of criminals not designated as mentally deficient."

"(2) In the English convicts the frequency of the distribution of the 'general intelligence' follows with sufficient exactness for practical purposes the normal curve of Gauss-Laplace of the deviation from the mean."

Donkin had, on the other hand, already noted in the adult population of England and of Wales that there is a percentage of 0.46 per cent of weak minded persons; in the English prisons, there is a percentage of 10 to 15, and, everything considered, even of 20.

This result has no flavor of novelty to Italian anthropologists and psychologists. All of us know how easily weakness (mild degrees of phrenasthenia) and even imbecility are met with among criminals and prostitutes. The connection between mental deficiency and kind of crime appears from a table the author gives. 52.9 per cent of those convicted of arson are mentally deficient, while the percentage of those guilty of fraud, bigamy, and unlawful surgery is 0. This, too, was known. But the author notes, however, that in England convicts are selected persons among criminals, since those who are deficient fall into the hands of the police, while those who are not escape. The following figures speak with eloquence:

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	Deficients	Non-Deficient	Total
Criminals .....	95	853	948
Non-Criminals .....	56	12,157	12,213
	—	—	—
Totals .....	151	13,010	13,161

Goring plays many variations of the same tune. "The relation between mental deficiency and crime, whatever it be, is, excepting certain kinds of fraud, extremely intimate. The force of this nexus is superior to that of any other connection which the investigation has revealed. It is evident that defective intelligence is one of the prime causes of crime in England," (p. 260). Again: "Criminals are differentiated from ordinary persons by their intelligence rather than by their physique. But probably the principal source of the close connection between mental deficiency and crime lies in the fact that the thing we call criminality, and which pushes one on to the commission of many crime, is not an inherent badness, but a "natural stupidity."

In this the author affirms a biological theory of crime. The anthropologists of the Italian School have never made so decisive a deduction. Nor does everything that he adds in his repetitions of the same theme contract the field of this theory. Instead he augments it, even to exaggeration. "Deficient physique, extreme forms of alcoholism, epilepsy, insanity, sexual irregularity, and mental deficiency—these, and only these, are the constitutional conditions which are significantly associated with the commission of crime (in England)."  
 "Except that alcoholism, epilepsy, and probably sexual irregularity, and insanity, are accidentally associated with crime, and depending upon an original high degree of relationship between deficient intelligence and crime."

If this is an interpretation of his figures, it seems to be very daring. The author is asking too much of the statistical method. Once again, I must warn him that a statistical result is one thing, and a doctrinal conclusion another thing. In any case, the conclusion is not antagonistic to the general results of criminal anthropology.

But is it true that physical weakness of criminals also depends on their mental deficiency? It does not seem so. "English criminals are distinguished from the general population by a physical condition and a mental make-up which are independent of each other. A generally low physique is significantly associated with criminality; and deficient intelligence is a vital mental constitutional factor in the etiology of crime."

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This serious result of the English investigation is confirmed by the research into the influence of environment on crime. This environment he calls the force of circumstances. The author deduces (p. 287) that an unfavorable environment has a more intimate relation with the intelligence of criminals than with the degree of their recidivity, or with the nature of crimes committed by them. Since mental deficiency is closely connected with crime, he deduces a corollary from what he has just concluded, and that is that the mental deficiency of the convict precedes the unfavorable influence of the environment. In short, in England, environment and the force of circumstances have an insignificant importance for crime: only in small part is crime the product of social inequality, of environment and of other circumstances.

The observations and the deductions of Ferri, Colajanni, Turati, and a hundred others are then all wrong. I believe, however, that it is not they who are wrong, but more probably it is the statistics that are wrong, or better, it is the comments which Dr. Goring makes on his statistics. In the general conclusion to the volume the author clinches the deductions regarding "the force of circumstances." Between any one of various conditions of the environment which are taken into consideration, as illiteracy, abandonment by parents, lack of work, poverty, states of delicate health, or morbid constitution *per se* or the nearness of death, on the one hand, and crime on the other, the author finds no evidence of any significant relation.

Those who hold to the biologic theory of crime must be very thankful to Dr. Goring. When he says that the principal factor in crime is heredity, he becomes more Italian than the Italians themselves. His conclusion is a Lombrosian conclusion of the first order.

But it seemed right to the author to discover the influence of heredity on the origin of crime. We may put aside certain affirmations, which, as usual, are dogmatic—as, for instance, these: "The statistician, and not the biologist, discovers the facts of heredity; the solution of the problems of heredity is confided to the statistician." Let us come to the facts. Here is an eloquent table (cf. p. 348):

CRIMINAL PARENTS	OFFSPRING		
	Per cent to expect, according to Mendelian	Per cent obtained by Pearson among tubercular persons	Per cent of criminal, according to Goring
Both .....	100	57	60.7
One .....	50	29	53.8
Neither .....	25	21	47.3

The percentage increases according as neither, one, or both parents are criminal. Although the Mendelian proportion is not attained, yet the table shows that crime is of a *hereditary nature*.

Another table, however, shows that the percentage of criminal off-

spring increases with the increase of the age of the offspring. This shows that circumstances determine crime. It is necessary, therefore, for a person to inherit a certain degree of "criminal diathesis" in order that he may in the course of time become criminal. Is not this the proposition of all criminologists?

In the general conclusion (p. 370 et seq.), the author summarizes all the deductions that may be made as the result of the investigation. According to the Italian positive school, he says, every criminal is abnormal by heredity, and may, therefore, be discovered because of his physical malformations, and his mental eccentricities. So says Dr. Goring, whose criminal anthropological learning seems to end at the year 1878.

In opposition to these presumed postulates of the Italian school, the English investigation concludes that the "anthropological monster" does not exist. The physical and mental constitution of the criminal, and of the law-abiding person, are, conditions being equal as to age, stature, class and intelligence, identical. The characters established by foreign anthropologists as peculiar to criminals, are due to an isolated inspection, and to a restricted knowledge of facts. The truth is, that these deviations from the normal which are described as being peculiar to criminality are the inevitable concomitants of inferior stature and of defective intelligence, which are the sole characteristics of the English convict. The thief has a smaller head, and a narrower brow than the officer who arrests him. But that is not because he is more criminal, but because he is more markedly inferior in stature (p. 370). The incendiary is more unstable in emotion, more deficient in control, more refractory in conduct, and more filthy in dress than the thief; and the thief is more distinguished in the above mentioned particulars than the forger; in all, more criminals have these qualities than the honest public. But that is not because each one of the classes above mentioned is more criminal than the other, but because of the differences in their general intelligence. On the basis of the statistics the following dogmatic assertion, as Goring says, may be made: that the criminal is differentiated by his inferior stature, by his defective intelligence, and in some measure by his anti-social tendencies. But apart from these, there are no characteristics, physical, mental, or moral, which are peculiar to the English convicts. "There are selective social processes, economic and legal, which seem to us without the theories of atavism and of degeneration to be simple, but sufficient explanation of the physical and mental characteristics of the criminal." "One in every thirteen ordinary (?) persons is at some time in his life convicted. If the total

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adult population were put in line in groups of thirteen, and if in every group, the person smallest in stature and most deficient in intelligence or who had fixed anti-social tendencies in a higher degree than the companions of his group, were selected, the individuals so picked out would then have more nearly the physical, mental and moral constitution of our criminal population, than that of the others."

Goring wishes the more general structure of deficiency to swallow up the criminal structure. So let it be. But that does not destroy the criminal structure. Since it would be necessary first to show that the deficient structure is homogeneous and not capable of differentiation, which is absurd.

In conclusion the author breaks a lance in favor of the English prisons which do not breed tuberculosis or other diseases; which prevent the criminal from reproducing himself, and advance his education and his culture. Above all, against the bugbear of criminal hereditary fatalism, the author hastens to say that no rational definition of the hereditary nature of crime presupposes the predestination of the criminal to inheritable misconduct. He believes that the degrees of criminal tendency, to be found in a certain measure in all persons, are inherited in the same manner as other conditions and tendencies. That means that in regard to constitutional equalities (mental deficiency, drunkenness, bad disposition, etc.), which tend to conviction for crime, there is a degree of parental similarity of the same intensity which there is between parents and offspring in respect to their tendency to become ill or to develop under the influence of common surroundings a certain stature. But this fact of similarity does not imply the absence of the influence of the environment in the development of human beings (page 373)." It is absurd to say that since the criminal tendency is hereditary, conviction for crime may not be influenced by education. It would be like asserting that since mathematical ability is inheritable, a person needs no education to become a mathematician. Or that since stature is inheritable, bodily development is independent of nutriment and of exercise. The correlations tell us that in spite of education inheritable constitutional conditions prevail in the making of criminals; but they do not tell us how much education may do to bring an individual with bad hereditary tendencies nearer to normality. In order to make honest citizens it is necessary to have capacity and education.

We are in entire agreement, and to the greatest extent in respect to prophylaxis. The Italian School has never held any other doctrine from the time that Ferri made clear what the Italian School understands by "the born criminal."

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The crusade against crime must be conducted according to Goring in three directions. We must modify the hereditary tendency, with proper educational measures; or even modify the occasion to commit crime by the segregation and the surveillance of the unfit; or, again, (and better still) regulate the reproduction of those constitutional qualities of mental deficiency, alcoholism, epilepsy, deficient social instinct, which conduce to crime. But at all events, the most important thing is that we must have correct notions of the object of the fight against crime and a clear idea of the nature which we wish to avoid. For this reason we want facts.

Very well. But Dr. Goring cannot feel offended if we loudly proclaim that the facts which he has with so much good will gathered, elaborated and commented upon are still not enough. It is not enough to study convicts by clinical and statistical methods. Criminal tendencies must be studied in their origin and in their development. We must analyze the mind of the criminal in its natural manifestation, which is crime. We must penetrate into the psychical structure of the repeater before we can declare that a positive science of crime is or is not possible.

Effective prophylactic provisions which the author indicates and upon which E. Ruggles-Brice in the preface to the work, insists are assistance to and vigilance over children sixteen to twenty-one years of age, this being the period in which it is easiest to become criminal, and the assistance and care of mental defectives:

Goring will permit me to remind him that Italian anthropologists commencing with Ferri and his theories of penal substitutes, have been the pioneers of a whole system of anti-criminal prophylaxis; and that, therefore, Cesare Lombroso, who symbolizes our whole prophylactic movement, deserves the place which Dr. Goring assigns to him in the humanitarianism of the times. The volume of Lombroso called "Crime" prepared the ground for the Royal Commission (1909-1910) which is to report a code on juvenile crimes, which, when it shall have been completed, may also be said to be a consequence of the Lombrosian movement in Italy.

To conclude, Dr. Goring has completed a truly valuable work for criminological science. But he has, however, deceived himself in respect to two points: first, when he believes that he has reached decisive and impregnable results only because they are based on statistical methods; second, when he argues that he has by means of his investigation given the death-blow to the Italian School of Criminal Anthropology. The impartial reader must recognize with me both the merits and the illusions of Dr. Goring.

## DEVELOPMENT OF THE SYSTEMS OF CONTROL OF CONVICT LABOR IN THE UNITED STATES.

E. T. HILLER.<sup>1</sup>

Prominent among the many phases of social legislation during the last decade is that relating to the control of the labor of convicts sentenced to punishment by imprisonment and compulsory labor. This recent legislation prescribing the manner of imposing compulsory penal labor is invariably granting to the state increased supervision and control over the labor of convicts and over the products of prison industry. This assumption of control by the state has grown steadily in prominence since the decade of the eighties; and within the last few years all the states, as well as the Federal Government, are not only extending their supervision and control over the employment of convicts, but are also generally taking over the operation of such labor directly for the benefit of the state and for the welfare of the prisoners. Although the legislation setting the precedence for these recent tendencies in the control of convict labor can be fixed pretty definitely in the decade of the eighties of the last century, efforts to secure such control of penal labor appear at a much earlier date. Isolated agitation and demands for such legislation are observed as early as the second quarter of the century, and soon after the Civil War this propaganda for a system of convict labor which should not compete unfairly with free labor and which should recognize certain penological requirements and principles, developed strength so rapidly that it resulted, before the close of the century, in working out and applying, by legislation, the present system of control of convict labor.

The system of control adopted in this present tendency toward the exclusion of convict labor from the wage and price market, and toward the application of this labor to public use under state supervision, is a modification of, and an outgrowth from, other preceding methods of control and application of such labor. These preceding methods of control are distinctly discerned in successive periods throughout the history of the United States, and form a valuable background for a study of the present methods of controlling compulsory labor, and for an appreciation of the great advance made in the protection extended by the state to the offender in society. An inquiry into these methods of control which have been used at different times in the history of the United States shows that they have passed through four well de-

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finer stages of development. Each of these stages falls into a more or less clearly defined period. These are: 1, the period of personal and local control, prior to the nineteenth century; 2, the period of public control and public account, coinciding approximately with the first quarter of the last century; 3, the period of private control and private account, covering approximately the last three-quarters of the century; and 4, the period of public control and public use, coinciding with the last two decades. In these successive periods, characteristic methods of employing convicts predominated; in the first, the indenture and personal account systems; in the second, the public account system; in the third, the contract, lease and piece-price systems; and in the fourth, the public or state use system. This historic sequence of the methods of applying and controlling convict labor results from the response of these methods to the industrial conditions and social philosophies of the different periods.

The manner of securing the raw material for the employment of prisoners, of supervising their labor and of disposing of the finished product, is known as a system of convict labor. It is in the variation of these three elements of a system of convict labor that the characteristics of the different periods of the methods of control of penal labor inhere. The tracing of these elements through the successive stages of the development of the methods of control of convict labor in the United States together with a brief discussion of some of the forces which have operated in this development constitutes the task undertaken in this study.

I.—During the eighteenth century the imposition of labor as a punishment for crime is characterized by personal and local control of such servitude. The peculiarity of this control in this early period of our industrial and social development is seen: 1, in the operation of the indenture; and 2, in the methods of supplying labor for the persons imprisoned in the houses of correction. In the operation of the indenture the relationship between the employer or lessee and the convict so bound out is direct.<sup>1½</sup> Likewise a directness of responsibility for providing employment for persons confined in the houses of correction is imposed by law upon persons legally responsible for wards so confined. When neither of these two methods is feasible, the community assumes the responsibility for the employment of persons punished by imprisonment with labor.

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<sup>1½</sup>Under the indenture a person is bound out by contract or by agreement to serve a lessee for a specified term for an agreed sum. The entire responsibility for the keeping, the employment and the care of the person so bound out is entrusted to the employer.

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The crime of theft was the first to be punished by compulsory labor under the indenture. Persons convicted of theft were enjoined to make three or fourfold restitution of the value of the goods stolen, and were further punished by fines or whipping.<sup>2</sup> But if the offender lacked means of making this restitution, the prosecutor might sell the service of the convicted person to any of the "king's subjects" under the terms specified by the court. This mode of imposing penal labor continued throughout the colonial period of Massachusetts and Maryland, and was re-enacted in Massachusetts under the new state laws of that commonwealth.<sup>3</sup> Legislation in that state, near the close of the eighteenth century, prescribed that the term of the indenture might not exceed the term of the sentence set by the court, and that if the service of the offender was not disposed of in thirty days the convict might be sentenced to imprisonment with "hard labor"; or the warden might bind out the service of the prisoner by indenture to make satisfaction for fines and cost of imprisonment only, the offender being exempted from the obligation of making restitution.<sup>4</sup> Similar laws enjoining offenders "to make satisfaction in service to any citizen of the United States for charges of imprisonment and fines," were enacted in New Hampshire and Connecticut.<sup>5</sup>

The indenture is a simple and direct method of imposing and controlling compulsory penal labor, and it was used, in addition to its punitive purpose, to make restitution and recover cost of imprisonment and fines imposed on misdemeanants. But because of its personal relationship between the employer and the sentenced person, it was capable of much abuse as well as of much good; for the treatment of the prisoner rested with the individual employer without any public inspection or control. The use of the indenture gradually decreased as economic conditions made it inapplicable or as public sentiment turned against it, and it was superseded by labor imposed with imprisonment in the houses of correction or work houses.<sup>6</sup>

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<sup>2</sup>Laws of Mass. Bay Colony, 1695; Laws of Maryland, Ch. 15, 1715. In Massachusetts (cf. laws 1695) branding was inflicted for the second offense of theft, and death for the third.

<sup>3</sup>Laws of Mass. March 15, 1785.

<sup>4</sup>Laws of Mass. June 18, 1799 and March 16, 1805.

<sup>5</sup>Laws of N. H. Feb. 10, 1791, and Laws of Conn. 1796, Sec. 13. "An act \* \* \* correcting \* \* \* rogues."

<sup>6</sup>The imposition of penal labor by means of the indenture was in harmony with the method of dealing with indentured servants in our colonial times. The importance of this method of employing convicts may be inferred from the frequent statutes relating to it and from the further fact that before slavery became extensive in the colonies, the demand for indentured servants was so great that it led to a well organized system of kidnaping and deportation to the American Colonies (cf. *Ency. Britannica*, article, Prison Discipline, and *Doc. Hist. of Am. Ind. Soc.*, Vol I, p. 339).

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The control of the labor of misdemeanants sentenced to these houses of correction was either personal or local. It was personal because relatives and "masters" were responsible for the employment of wards so confined.<sup>7</sup> It was local because the community or the county, and not the state, provided employment for those who could not be furnished with material and tools by relatives or masters. Persons imprisoned in the houses of correction were set to work unless they were physically unable to perform manual labor; and if unruly they were to be further punished by whipping and abridgment of food, "or in a manner suited to the case." When the offender was a stranger in the county, and was not legally responsible to anyone in the community, employment was furnished him through the office of the keeper or overseer of the house of correction. The fines and cost of keeping were charged against the prisoners and "they were allowed for their labor and work the sum of 8 pence out of every shilling" they earned. If such persons were masters or heads of families, the whole profit and benefit of their labor, or so much thereof as the court should think necessary and direct "was applied for the relief and support of such persons and their families." Parents and masters paid to the keeper any deficits incurred because of the inability of imprisoned persons to engage in any occupation, and a part of the earnings reverted to the family of the imprisoned person. The earnings of strangers in the community who were convicted of misdemeanor and imprisoned in the houses of correction, were paid into the public treasury. Any deficit incurred because of their inability to work was restored to the warden by a general assessment made by the selectmen. In estimating profit and deficit, the keeper's salary was counted into the cost. He received as salary a specified portion of the earnings of those employed, and a pro rata share of those unemployed was borne respectively by the relatives or masters and by the community.

The imposition of penal labor by the use of the indenture and by labor imposed in the houses of correction existed concurrently throughout the greater part of the eighteenth century.<sup>8</sup> But labor imposed

<sup>7</sup>Laws Mass. Oct. 22, 1700.

The terms master and servant were applied to the parties entering into an agreement either under a formal legal document or merely under the sanctity of custom to employ and serve for remuneration or in lieu of training under the apprenticeship, for a prescribed term of years. It is in this sense that the terms master and servant were used in these early laws. [cf. Bruce, *Econ. Hist. of Va.*, Vol. I, p. 573.]

<sup>8</sup>The indenture was authorized by a law of 1695 (cf. Mass. Bay Colony, law 1695) and imprisonment with labor in 1700 (*ibid.*, Oct. 22, 1700). In 1805 (*ibid.*, Mar. 16, 1805) the law still recognized the use of the indenture, but provided that if the prosecutor failed to employ or to bind out the convicted person, the offender might be sentenced to labor in prison, and indemnity made "from the

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in prison came to be more extensively used than the indenture because the former was imposed for a variety of offenses, while the latter was used only for making indemnity and for recovering fines and cost of imprisonment of persons convicted of theft; and imprisonment with labor was also, in time, substituted for this purpose.<sup>9</sup> Imprisonment with labor increased in prominence also because this form of punishment was substituted for corporal and, to some extent, for capital punishment.<sup>10</sup> Penal labor imposed in prison became the prevailing form of control of such involuntary servitude, and has continued so down to the present time; while the indenture, which was applicable to the social and industrial condition of our colonial times only, disappeared near the close of the eighteenth century. Compulsory labor ceased to be controlled either by personal or by local authority, and came to be directed and supervised by county and state authority.

II.—The characteristics of the employment of convict labor in the first stage of the development of the methods of control of such labor are those of direct relationship between the employer and the convict in the operation of the indenture, the responsibility of relatives and masters in providing employment for wards and servants imprisoned in the houses of correction, and the sharing by the prisoners in the fruits of their own labor. These characteristics were modified near the close of the eighteenth century by several circumstances. These were:

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earnings as they [should] accrue and as far as they [might] extend." The laws of Connecticut made similar provisions for supplementing the indenture and for recovering fines and cost of imprisonment by the use of hard labor in prison. (cf. Sects. 13-18, Laws of Conn. 1796—"An act constituting Newgate prison.")

<sup>9</sup>Laws Mass. Oct. 22, 1700; June 18, 1799; Mar. 16, 1805; also laws of N. H., Feb. 10, 1791.

<sup>10</sup>The substitution of penal labor for other forms of punishment among the various states may be illustrated by the legislation of New York. In 1788 the death penalty was attached in that state to the crimes of treason, murder, forgery, counterfeiting, rape, forcible detention of women, robbing a church, house-breaking by day or night if the house were occupied, robbery, wilful burning of any house or barn, and malicious maiming. Justices of the session were also authorized to punish vagrants and disorderly persons by whipping and six months' imprisonment; but in 1789 it was permitted that labor be substituted for whipping at the discretion of the courts. By an act of 1801 the death penalty was confined to treason and murder, and whipping was dropped from the punishment of larceny. In 1789 the city of New York had set a precedent for the employment of convicts in that state by putting vagrants to work "in cleaning out the drains beneath the exchange and the fly market, the community having petitioned in 1788 for the enactment of a law providing for hard labor both within and without doors." (cf. T. B. F. Smith, N. Y. in 1789, pp. 13, 14.)

As the prison reform movement extended among the states compulsory labor was invariably provided for in the new statutes. In 1829 ten states had adopted such reform of their penal codes. (cf. Boston Prison Discipline Society, Ann. Rept. 1829, p. 31 ff. and de Beaumont and de Tocqueville, Penitentiary Systems in U. S., p. 12.)

1, the repeal of the law which had required that parents and masters furnish the means of employment for wards and servants imprisoned in the houses of correction,<sup>11</sup> and 2, the concentration of large numbers of convicts by confining them in the newly erected state prisons and large county prisons or penitentiaries. Resulting from these circumstances a new form of control of compulsory labor developed; namely, that of public or state control and public or state account. The control of penal labor in the houses of correction and in the gaols is placed "wholly under the government of the overseer" or keeper, and likewise in the state prisons and penitentiaries the labor of convicts is placed under the control of the state officers, the wardens and inspectors of the state prisons.<sup>12</sup>

The most prominent method of employing penal labor in the period of state control and state account is by imprisonment with labor in state prisons and penitentiaries, and not as in the period of personal and local control, by the use of the indenture and by labor imposed in the county houses of correction.<sup>13</sup> The control by the state is vested in the prison officers, who are empowered to prescribe how and by whom the employment shall be furnished; and they are responsible, likewise, for the disposition of the products of prison industry. The executive officer, who is designated as warden or state agent, becomes an entrepreneur on behalf of the state. There is still a general expectation that the labor of prisoners will net a profit over all prison expenses, but only deficits result; and in consequence the theory and the practice of keeping an account for the labor and earnings of each convict falls into disuse. The deficits are assumed by the state, and prison industry comes to be conducted entirely by, and on account of, the state.<sup>14</sup>

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<sup>11</sup>Laws of Mass. June 25, 1802. By this law no parent or master might furnish employment without the consent of the overseer of the prison. Likewise in New Jersey the county, through the office of the warden, provided the raw material and tools for the employment of prisoners. (cf. Laws of N. J., February 20, 1799.)

<sup>12</sup>Laws, Mass., February 27, 1798.

<sup>13</sup>During the years 1790 to 1812 five state prisons were established; Conn. (1790, cf. Am. Ec. Assn. Pub. Sec. 3, Vol. 8, No. 3, p. 220); Pa. (1700, cf. Pa. Jol. of Pris. Disc., Vol. 1, p. 4); N. Y. (1797, cf. Laws of N. Y., Mar. 26, 1795); N. J. (1798, cf. Laws of N. J., Feb. 15, 1798); Mass. (1805, cf. laws of Mass., Je. 15, 1805); N. H. (1812, cf. Laws of N. H., Je. 19, 1812). The laws creating the prisons prescribed the manner of conducting the prison labor and industry.

<sup>14</sup>Dr. E. Stagg Whitin, Genl. Secy., Nat'l Com. on Prison Labor, says (cf. Penal Servitude, p. 6) that "the earliest prisons in the United States were privately owned. The state paid a small sum for the keep and guarding of the prisoners, whom the private individuals worked at their own discretion, deriving from the work what profits they might. We next see the head of the penal institutions appointed by the state, but paid by individual manufacturers for whose profit he worked his prisoners." This statement of Dr. Whitin is un-

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Not only was the labor of the prisoners conducted by the prison officers, but by them also were the prison-made goods entered upon the market. The warden's duties relating to the management of the labor of convicts were prescribed in detail by statutes, but no directions were given in the laws for the disposition of the goods made in the prisons.<sup>15</sup> These goods were sold from stores and warehouses, openly advertised as prison-made or surreptitiously sold, feigning that they were made by free labor.<sup>16</sup> Convicts were also employed in quarrying and in preparing building material for the market. But the limited demand for prison wares forced upon the warden increased burdens as an entrepreneur in trying to keep the felons employed at profitable occupations.

In order to understand fully the forces which shaped the methods of control of convict labor in the first half of the last century it is necessary to review briefly the question of the two methods of imprisonment known respectively as the separate or solitary system, and the aggregate or silent system. The separate system of imprisonment was advocated by reformers and penologists in Pennsylvania, while the aggregate system was advocated by penologists in New York. The controversy over these two systems was viewed with deep interest by all the states and by Europe as well, and was of far-reaching effect in shaping the methods of imprisonment and employment of felons in the early decades of the century. A plan of separate or solitary confinement with absolute unemployment was widely advocated in Pennsylvania, but the system finally adopted in that state prescribed work with cellular imprisonment, save for the more atrocious criminals, who were confined in idle solitude. The evils of aggregate housing and promiscuous mingling of prisoners, which the advocates of the separate system condemned, were overcome in the New York plan by separate confinement by night and aggregate employment in common workshops by day. The New York plan was a great advance in penal principles, and was everywhere copied, save in Pennsylvania, as prison reform advanced.<sup>17</sup>

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reliable, as the present inquiry of the early state prisons shows. Dr. Whitin's source is Eave's *Cal. Lab. Leg.*, which refers only to Cal. and not at all to the penal history of other states.

<sup>15</sup>A few general phrases are, however, found in the statutes, for example, the laws of Mass. (cf. *Laws*, Mar. 13, 1805) prescribed that the state through the office of the warden, "shall vend and dispose of all articles \* \* \* manufactured" by the prisoners.

<sup>16</sup>G. Powers, *An Account of Auburn Prison*, p. 25; *Hist. Am. Ind. Soc.*, Vol. V, pp. 53 and 231. *Sen. Doc.*, No. 174, 25th Cong., 3d Sess., Vol. III, (Feb. 21, 1839).

<sup>17</sup>*Penn. Jol. of Prison, Disc. Soc.*, Vol. I, p. 4, ff.; Vol. 4, p. 112, ff.; Vol. 17, p. 4, ff.; *Boston Pris. Disc. Soc.*, *Rept.* 1827, pp. 73 and 112; 1828, p. 21; *Rept. Comm. of Lab.*, 1886, p. 505; de Beaumont and de Tocqueville *Pris. Sys.* in *U. S.*, p. 3, ff.

The aggregate or Auburn system, besides being advocated for penological reasons, recommended itself because it was suited to the new and changing industrial conditions of the time. As the division of labor in the trades and crafts advanced along with the progress of our industrial revolution, team work in prison industry, as well as in free industry, became more productive than isolated employment, and the aggregate system became necessary for the most successful operation of prison industry. The Boston Prison Discipline Society threw its strength on the side of the aggregate plan of employment because thereby work was more certainly guaranteed than under the plan of cellular confinement and employment.<sup>18</sup> The society was, no doubt, prompted by a humanitarian motive and insisted on employment because of its reformatory influence upon the prisoner.<sup>19</sup> The aggregate plan, because it afforded the greater advantages in securing steady employment and in controlling the labor of prisoners, became the universal plan of employment and imprisonment save in Pennsylvania. But because of the greater number of occupations which this plan admitted into prison enterprise and because of the greater adaptability to industrial conditions which it made possible, the entrepreneur functions of the warden were greatly increased, and after his divided duties resulted in inefficient employment of the felons and in lack of prison discipline, the operation of prison industry was turned over to private manufacturers. Pennsylvania alone adhered to the separate method of employment and imprisonment, and with a slight use of the piece-price plan adhered to the state account system, while all the other states adopted the aggregate method and turned to the contract in search of a more effective method of employing the labor of felons.<sup>20</sup>

In addition to developing the aggregate system, the industrial condition of the country, in several other ways, exerted a large influence in the development of the methods of controlling compulsory labor. 1. The meager transportation facilities and the inadequate demands of the market for prison-made goods, resulted in a lack of suitable employment as soon as criminals were grouped to any considerable extent in the large prisons.<sup>21</sup> This lack of employment resulted, in all the states, in a large annual deficit until the decade of the twenties, at which time the contract system was introduced into

<sup>18</sup>This society was a voluntary philanthropic organization founded in Boston in 1825.

<sup>19</sup>Boston Pris. Disc. Soc. Rept. 1828, p. 21.

<sup>20</sup>Penn. Jol. of Pris. Disc., Vol. 4, p. 112; Rept. of Com. of Lab., 1886, p. 207.

<sup>21</sup>Rept. of Board of Visitors of Mass. State Pris., appendix pp. 18-19 (1805). Haynes Hist. of Mass. State Pris., pp. 4-13. Rept. Com. of Lab. 1886, p. 504.

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prison industry.<sup>22</sup> In urging employment for prisoners, "productive work" was always insisted upon, meaning employment from which a pecuniary return might be realized. No thought was given to the employment of convicts on public works and for state use. Consequently the presence or absence of work hinged on the question as to whether or not the wares would find a demand on the market. 2. The profitability of prison industry was further affected by the introduction of machine methods into free industry which forced down the market price and in consequence made prison industry, which lacked the best methods of production, liable to greater losses.<sup>23</sup> 3. The desire to keep the prisoner profitably employed led to the introduction of a great variety of occupations, but prisons were everywhere conducted at a loss; and the exaggerated importance attached to pecuniary returns led to the selling of prison labor to private entrepreneurs and to the relinquishing of the control of this labor to the employer.

Prior to the close of the eighteenth century the control of compulsory penal labor was vested in personal and local authority, but during the first quarter of the nineteenth century this control is assumed by the counties and states. This control is exercised through responsible public officers; and prison labor, in this second stage of the development of the methods of such control, is conducted by these public agents who provide the means of employment and market the prison-made wares. The legal regulations prescribe that both the prisoner and the state shall share in the net earnings of the convict's labor, as had been the practice in the period of personal and local control. But only deficits occur, and an account of credit and debit is kept not with the prisoner but with the state only, and prison industry comes to be conducted by and on account of the state. The expected earnings of prison labor is interfered with by both internal and external forces in the administration of penal institutions. The internal force is the increase in the number of prisoners grouped in one locality and the consequent over-supply of prison-made wares in the personal and local market. The external forces are: 1, the low demands of the market which is a contributory cause in the stagnation of prison industry; 2, the competition from the superior free industry which

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<sup>22</sup>David Dyer Hist. of Albany Penit., p. 450 ff. Boston Pris. Disc. Soc. Rept. 1826, p. 43, *ibid* 1828, pp. 15-17.

<sup>23</sup>Soon after the erection of the Auburn prison, the commissioners recommended that prison industry "should be a business that can not be conducted by machinery so as to reduce the wages too low." [G. Powers, An Account of N. Y. Pris. at Auburn, p. 72 (1826.)]. The Boston Pris. Disc. Soc. reported in 1826 that "weaving was remunerative because it could not be performed by steam or water power, and it therefore payed well for manual labor." (cf. Boston Pris. Disc. Soc. Rept. 1826, p. 16.)



forces down prices and shuts out occupations from use in the prisons; and 3, the development of the factory method of production which makes the handicraft method of employment in prisons impracticable and unprofitable and demands aggregate team work in prison industry. This aggregate method of employment not only makes impossible an accurate personal account with each prisoner, but also necessitates specialization in the operation of the various manufactories introduced into prison industry.

These economic conditions which result in the stagnation of prison industry and in the low remunerativeness of penal labor, and which augment the penological and industrial duties of the warden are the forces which lead to the adoption of a third method of supervising the labor of convicts; namely, that of private control and private account.

III.—The bringing together of large numbers of convicts in large prisons in the latter part of the eighteenth, and the early part of the nineteenth century gave rise to new moral problems in the care and housing of convicts as well as to economic burdens in their employment. The application of the labor of these felons was unsuccessful in meeting the demands either of those citizens who were concerned about the prison finances, or of those who were interested primarily in the moral welfare of the convicts. To find a remedy for this lack of employment and discipline, the contract, lease and piece-price systems were instituted in prison industry during the decades of the twenties and thirties and continued as the prevailing methods of employing compulsory labor till the close of the century.

In these systems the control over the convicts by the employer varies from more or less restriction as to the working hours and tasks, to complete jurisdiction over the care, housing, discipline and employment of the prisoners. In delegating to private entrepreneurs the control of the labor of convicts the state in every case relinquishes a part, and in some cases all, of the moral and disciplinary supervision over the persons sentenced to compulsory labor. In the contract system the care and discipline of the prisoners is reserved to the warden as his special duty, while in the lease system this function is delegated to the employer. In the piece-price system the power of the employer or contractor extends only to the purchase of the raw material and to the selling of the finished goods, while the direction of the labor and the discipline of the prisoners is posited with the warden and his responsible foremen. A system of profit sharing between the state and the lessee also had a limited existence, being used only in the state prison of Kentucky, from 1825 to 1860. In this plan of control the employer has similar authority as in the lease sys-

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tem. Of these methods of private control, the contract was the earliest as well as the most extensively used. The lease system did not come into extensive use until after the Civil War, although it was used in the North before that time. The piece-price system did not gain prominence till the decade of the eighties when it was used as a substitute for the contract system and as an alternative to the public account system. Throughout the middle part of the century the contract was the principal plan of employment, and therefore the discussion of the period of private control has to do largely with this system of imposing compulsory labor.

The contract system was introduced in the State Prison of Massachusetts in 1807, and continued with a slight interruption in 1828 till 1887.<sup>24</sup> It was introduced in New York in 1824,<sup>25</sup> in Kentucky in 1825, in Connecticut in 1828,<sup>26</sup> and in Ohio in 1835.<sup>27</sup> In most prisons the system was introduced gradually, the various departments of industry being hired out as the burden of securing employment under the state account became burdensome, or as the contract system offered greater remuneration. The extent to which the contract system was introduced into a prison depended (on the side of the prison administration) on the obstacles interfering with the favorable operation of the state account systems, and on the relative remunerativeness of the two systems; and (on the side of the employer) on the prospect of profitable employment of the convict labor. In times of prosperity the wardens experienced little difficulty in hiring out the labor of convicts, but in times of depression contractors were slow to hire prison labor; and it was at such times also that the employment under the state account system was most difficult to procure.<sup>28</sup> The contract system was introduced only gradually, and was subjected to the changing industrial conditions and to public sentiment, but after being introduced into a prison, the system continued with but slight or temporary interruptions till the latter part of the century. A few attempts to abolish it in several prisons proved unsuccessful. One such attempt was made in Massachusetts in 1828. A law of that

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<sup>24</sup>Haynes, *Hist. of Mass. State Prison*, p. 7, ff. The first law in the U. S. relating to the contract system was enacted by the legislature of Massachusetts in 1798 (cf. *Laws Feb. 27, 1798*). This law directed that the wardens of the houses of correction should hire the labor of the prisoners to any one who was willing to furnish the material on which the prisoners might be employed, but there is no contemporary record found showing that the contract system was used till 1807.

<sup>25</sup>G. Powers' brief account of Auburn Pris., p. 25 ff.

<sup>26</sup>Pub. Am. Econ. Assn., Sec. 3, Vol. 8, No. 3, p. 224.

<sup>27</sup>N. P. A. Ann. Rept. 1886, p. 222.

<sup>28</sup>Rept. of Inspectors of N. Y. State Prisons 1859-1860.

year forbade the wardens to hire out the prisoners to contractors;<sup>29</sup> but the attempt to secure employment under the state account system was unsuccessful and idleness prevailed. The effort to meet the exigency gave rise to the first use of the piece-price system. The prisoners were, for a short time, employed in setting up kegs, the staves and headings being previously prepared.<sup>30</sup> The state received three cents a keg for this work. There is no evidence that this method of employment continued long; at any rate, the amount of work was found to be insufficient, and the contract was reintroduced as a lesser evil than unemployment. In New York in 1847 the term of contract was limited to five years.<sup>31</sup> There was considerable opposition to this restriction because it was thought that such a limitation would stand in the way of making the most favorable terms with the contractors, and would cause undue irregularity of employment and unnecessary effort in making contracts. The prison commissioners urged that it be made optional with the contractors to extend the term of the agreement for additional five years. In 1851 the public account system was tried in Ohio, but with unsatisfactory results, and the contract system was reintroduced.<sup>32</sup> The contract system clung tenaciously to prison industry until the demands of labor organizations and of reformers became extensive enough to induce legislation for the protection of the prisoner against the cupidity of the entrepreneur, and of free labor against the unfair competition with prison labor.

The employment of prisoners under the contract won public favor because of its profitableness to the state,<sup>33</sup> because of the small demand it made on the administration to conduct it,<sup>34</sup> and because it relieved the state from entering as an entrepreneur upon the competitive market.<sup>35</sup> The public account system was wanting, in the early part of the century, in all these points, and in consequence was generally

<sup>29</sup>Laws of Mass. Nov. 1, 1828.

<sup>30</sup>N. P. A. 1894, p. 65.

<sup>31</sup>Rept. Inspectors. N. Y. Prison, 1854-56. p. 20.

<sup>32</sup>N. P. A. Rept. 1884, p. 132.

<sup>33</sup>If the state agent is successful in contracting the labor of the convicts at a fair price and at regular employment, the financial success of the contract system is assured, and it is the most remunerative except the lease system; for it throws on the contractor all responsibility for buying, selling and collecting. It requires little state capital, and more than other systems, except the lease system, gives a steady, sure and definite income. The state is paid whether the convict works or not, and bidding for the contract will insure pay about equal to what the labor is worth. [Ec. Assn. Pub. Sec. 3, Vol. 8, No. 3, p. 244.]

<sup>34</sup>G. Powers, A Brief Acct. of N. Y. Prison, p. 25 ff.; Boston Pris. Disc. Soc. Rept. 1833, p. 76.

<sup>35</sup>Boston Pris. Disc. Soc. Rept. 1833, p. 76; N. P. A. 1886, p. 222; Haynes, Hist. of Mass. State Pris., p. 242.

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superceded by the private methods of supervising the labor of the convicts.<sup>36</sup> The contract system has been both defended and condemned on moral and humanitarian grounds. It has been opposed for various reasons: 1, it lacks discipline;<sup>37</sup> 2, it puts the emphasis on the earning power of the prisoner rather than on the reformative and instructive value of his labor;<sup>38</sup> 3, it introduces the evil influence of irresponsible foremen and mechanics;<sup>39</sup> 4, contractors are prone to exact an undue amount of work from the prisoners and thereby inflict not only great injustice but also permanent physical injuries;<sup>40</sup> and 5, it does not discriminate in favor of the young and corrigible prisoners.<sup>41</sup> Although the merits of the contract system were warmly debated pro and con throughout its long history, it is not the most devoid of penological merits. The greatest moral abuses have been ascribed to the lease system—the second prominent method of private control of compulsory penal labor.

The first law in the United States authorizing the contract system also permitted a modified form of the lease system.<sup>42</sup> In this law of Massachusetts in 1798, the wardens of the houses of correction were permitted to hire the labor of prisoners to anyone who would furnish employment near enough to the prison that the officers might have a general supervision of the convicts and of the care and treatment received. In 1825 the convicts in the state prison of Kentucky were leased to an employer who was given complete control of the labor, discipline and care of the prisoners.<sup>43</sup> But instead of employing the convicts outside the prison, as is the case with the ordinary lease system, they were confined in a prison over which not a warden, but a lessee had control. This early type of the lease system is peculiar also in the fact that the state received not an annual or daily sum for the labor of the felons, but a percentage of the net earnings of their labor. The contractor for the prison labor, in lieu of an agreed percentage of the profits, assumed all responsibility for the management of the prison and its inmates. The final stage of the lease system is reached when entrepreneurs appear who are willing to assume the responsibility of

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<sup>36</sup>Boston Pris. Disc. Soc. Rept. 1833, p. 75.

<sup>37</sup>Wines and Dwight, *Penal and Reformatory Institutions in U. S. and Canada*, p. 256; Haynes *Hist. of Mass. State Pris.*, p. 223.

<sup>38</sup>*Inside Out*, p. 134.

<sup>39</sup>N. P. A. 1886, p. 221.

<sup>40</sup>Am. Ec. Assn. Pub. Sec. 3, Vol. 8, No. 3, p. 235; N. P. A. 1887, p. 161.

<sup>41</sup>*Ibid.*, p. 319.

<sup>42</sup>*Laws Mass.* Feb. 27, 1798.

<sup>43</sup>N. P. A. 1887, p. 319; Boston Pris. Disc. Soc. 1827, p. 83; Wines and Dwight *Penal and Ref. Inst. in U. S. and Canada*, pp. 248-60.

employing, guarding and maintaining the convicts without the aid of any public prison, in lieu of the permission to employ this labor in private enterprise. The lease system in this final stage was used in Illinois and Missouri before the Civil War and is not a southern invention, as is usually supposed, although it was most extensively used in the reconstructed states because of the lack of public prisons and state capital, and because of the peculiar adaptability of the climate of the southern states to outdoor employment.<sup>44</sup> Following the close of the Civil War the rapid increase of the criminal population forced upon the provisional government the question of the detention of the convicts, and the lease system was adopted as an expedient. Perhaps the first prisoners leased to private employers after the war were those of the Penitentiary of Mississippi. A written consent from the prisoner was necessary to employ him under a lease outside the penitentiary.<sup>45</sup>

The apology for the use of the lease system is that the circumstances of the reconstructed states did not permit the adoption of any other. They were not able to provide public institutions and to "follow the excellent example" set for penal matters elsewhere.<sup>46</sup> Raw material had been consumed and not replaced, and the states found themselves with over-crowded prisons and with empty treasuries. Thus began the lease system which "with various modifications has prevailed in all the reconstructed states, some retaining more and some less of the management and control of the convicts."<sup>47</sup> Though the lease system was the outgrowth of necessity, and admitted of the grossest outrages by the lessee upon the unprotected felon, nevertheless the employment in the open which it made possible was highly essential to the health of the convicts. It would have been unwise to confine them in such prisons as were used in the North. "Such a course would have resulted in enormous death rates without any substantial economic gain."<sup>48</sup> Immediately after the war the lease system did serve a purpose, but it has, save in a closely regulated form, outgrown all apology for further existence; and it is, in the more objectionable form, disappearing in the United States. Not only did the events of the Civil War greatly influence methods of imposing compulsory labor in the South, but also in the North specific results attach to that period. The industrial disturbance of 1858 and 1859 caused a stag-

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<sup>44</sup>N. P. A. Rept. 1889, p. 85. ff.

<sup>45</sup>Ibid., 1888, p. 60.

<sup>46</sup>Ibid., 1886, p. 135.

<sup>47</sup>Ibid., p. 136.

<sup>48</sup>Ibid., 1889, p. 216.

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nation of prison industry, and the demands for the products of penal labor were further decreased by the closing of the southern market, especially for shoes for the negro slaves.<sup>49</sup> During the war convict labor was used to make army supplies, and prison industry also shared the general (paradoxical) prosperity of that period.<sup>50</sup> After the war the magnitude of prison industry was further increased by the fact that the penal institutions were rapidly being filled with felons sentenced to compulsory labor. The prosperity of the employers of penal labor is apparent from the fact that all the prisons conducted under the state account system were, in 1868, netting a profit; and it was the concurrent testimony of prison officials that contractors of prison labor became wealthy.<sup>51</sup> The social and industrial disturbances of the war period are seen in the North in augmenting the magnitude of prison industry under the contract system, and in the South, in establishing the lease system.

The prevalence of the private control of compulsory penal labor under the contract and lease systems is indicated by the fact that in 1867 "the system of working the prisoners on account of the state was used in but three state prisons"—Clinton Prison, New York, and those of Maine and Wisconsin, and was in partial use in New Hampshire; "while the contract system was the prevailing method of employment in the Northern states and the lease system in the Southern states."<sup>52</sup> In 1874 the contract system prevailed exclusively in twenty state prisons, the lease system in six and a mixed system in seven.<sup>53</sup> In the latter, a part of the labor from which cash revenue was derived was let to contractors and another part was managed by the authorities on behalf of the state. In 1887 the contract system was sanctioned in a pure or mixed form in twenty-eight states, and the lease system in ten states. Among all the states fifteen permitted the use of the state account plan if it seemed to be to "the interest of the state" to do so. But this system usually proved to be the least profitable and the most difficult of administration, and in consequence the contract and lease systems continued unrestricted until the demands for reformation and for freedom from competition between contract prison labor and free labor induced the legislatures of the states to adopt the public account and other systems under public control.

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<sup>49</sup>Hist. of Albany Penit., p. 107.

<sup>50</sup>Haynes, Hist. Mass. Pris., p. 103; Hist. Albany Penit., pp. 92, 107.

<sup>51</sup>Wines and Dwight, Penal & Reform. Inst. in U. S. & Canada, p. 225.

<sup>52</sup>Ibid.

<sup>53</sup>Natl. Pris. Cong., Rept. 1874, p. 393.

In this opposition to the methods of private control, organized labor and prison reformers and penologists have, in the main, stood together, and have presented their united strength in their demands for the restriction of abuses and for the adoption of protective and humane methods. For nearly a whole century free laborers, individually and unitedly, have urged, pleaded for and demanded protection against the unfair and unequal competition with subsidized penal labor; and have requested that the dignity of labor be regarded by imposing it not to torture, but to reform the social offender. The platform of organized labor on the question of penal servitude is clearly presented in a statement issued by the convention of hat makers in 1878, and may be cited as summing up the demands and objectives of free labor on this phase of its concerted effort for self-protection and social betterment. The convention expressed its unalterable opposition to the system of hiring out to favored contractors the labor of criminals; and adopted a resolution that it protest against turning the prisons into private workshops; that the government has no right to tax a business when that government is at the same time lending its authority to destroy the business; that the chief purpose of imprisonment should be the reformation of the criminal; that his earnings should be secondary instead of first; that the prison management should be removed from party politics; and that the convention urge in all states: 1, the abolition of the contract system; 2, the removal of machinery from prisons, and employment of prisoners at hard labor only; 3, employment of prisoners at public works carried on by the state and for the manufacture of articles needed in prisons; 4, the instruction of prisoners in common educational branches; 5, that no merchant who deals in any manner whatever in prison-made articles be patronized directly or indirectly; and 6, that mechanics refuse to work for or with "any man who has been so base as to go to a state prison and instruct convicts in any branch of skilled labor." Since 1823 free laborers have persistently turned to political activity in their efforts to secure protection from the menace of convict labor, but extensive results were not achieved till after the amalgamation and federation of trade unions during the decades of the seventies and eighties.<sup>54</sup> The opposition of mechanics and labor organizations to the competition of prison labor, has, in the main, been directed against the contract and lease system and against the moral indignities which have been brought upon the workman by making his means of livelihood an instrument of punishment and by the scattering of the prison-trained mechanics

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<sup>54</sup>Rept. of Comm. of Lab. 1886, p. 578.

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among the honest citizens engaged in similar trades. The contract system received the brunt of the opposition because it was the most extensively used method of employing compulsory labor, and because the commodity produced under it was such as to be entered upon the market more extensively than the commodity produced under the lease system. The labor directed by the lessee was extensively used in construction work which may displace but does not menace free labor. So long as the methods of private control in unrestricted form were the chief methods of employing compulsory labor, they were thought to be the cause of the unfair competition; but they were merely the apparent cause. The amount of convict labor employed under the state account and piece-price systems was too small to attract opposition prior to the decades of the eighties and nineties; and the public account system was also favored above all the other plans which had been used because it made the state and not the entrepreneur the beneficiary of the prison labor. But after the state account system was extensively employed, it was discovered that even this method of control did not do away with the low competitive menace, and opposition arose also against this plan which had previously been advocated. The explanation for the changed attitude toward the state account system, and the opposition to all the systems which had been tried prior to the last two decades, is found in the fact that the injurious competition does not arise from the nature of the supervision of prison labor and industry, but solely from the fact as to whether or not subsidized goods or commodities of inferior quality are entered upon the price and wage market.

The phenomenal achievement of organized labor, penologists and reformers in obtaining favorable legislation shows that though the industrial revolution and economic necessity are responsible for the organization of laborers and for their program of restrictive and protective legislation, nevertheless the dominant influence in shaping the policy for the employment of convicts is no longer a blind force uncontrolled by organized social action. The new social force of organized labor has been the winning contestant in the controversy over prison management during the last two or three decades. The demands of organized labor have been gradually acceded to by legislatures, and the most recent penal methods are the result of the co-operation of organized labor, penologists and reformers in their effort to secure such a system of employing social offenders as should do away with menacing competition, afford steady employment of a productive, useful and genial kind and recognize the right of the prisoner to humane treatment and to a chance to make good as a citizen. These high



ideals were for the first time in the history of penal matters in the United States embodied in the plan of employing civil offenders known as the state or public-use system. The adoption of this system of state control and state use is the turning point toward the development of the recent methods of controlling compulsory labor.

IV.—The long continued and strenuous opposition by organized labor and reformers against the contract and lease system, has, during the last three decades, resulted in the resumption by the state of the control of compulsory labor. The methods of control which usually followed the abolition of the contract and the lease systems were those of the state account and piece-price systems which at first seemed to offer a solution for the problem of the administration of compulsory labor. But it was soon discovered, on the one hand, that the menacing effect of convict labor upon free labor was not removed; and on the other hand, that employment was difficult to secure and that undue burdens were placed on the state agents in conducting the prison industry under the public account system. To guard against unemployment and against overburdening the prison officers, a combination of public and private control was effected in the adoption of the piece-price system, and further means of employment sought by engaging the labor of convicts in non-mechanical occupations on highways and public lands and farms, and on public works and buildings. While the prison officials found that the public account system as it was usually conducted in prison manufactories was inadequate and unsatisfactory, and were in consequence resorting to the piece-price system, free laborers were, at the same time, discovering that so long as convict labor was entered upon the wage and price market, the menace of the subsidized industry and the low-level competition remained. In consequence, organized labor opposed the state-account and piece-price systems, and advocated the adoption of a system whereby the products of the mechanical industries conducted with prison labor should be disposed of in an especially created market separated from the competitive one, and under the control of the state. If more labor obtained than should be necessary to supply that market, such surplus labor should be employed on public works, highways and public farms in such a way as not to compete with wages or with the prices of the wares produced by free labor. The creation of such a preferred market, it was thought, would not only remove the menace of competition, but also make possible the disposition by prison officials of the wares of prison manufactories, thereby affording sufficient, suitable and healthful employment for the discipline and correction of the prisoners.

Such a plan of employing convicts and of disposing of the prison-

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made wares, is known as the state-use system. "This system provides, in brief, that no prison-made goods shall be sold in the open market, thus reducing the competition with free labor to an indirect competition in that the prison-made products shall, by law, be sold only to the state and its political divisions—the counties, cities and towns, the state and its subdivisions being obligated by law to purchase the prison-made goods at prices determined by a special board, whenever the articles required by the state and its political divisions may be manufactured by the prisons."<sup>55</sup>

Legislation on penal labor, during the last fifteen or twenty years, has been in the direction of some such form of state use and state control of compulsory labor. But the most prominent development during these years is the extension of public control over convict labor under whatever system it may be employed. The maximum control is attained in the state use system, and is lessened in the public account system only by the absence of control over the market. The piece-price, contract and lease systems present less public control, but even in the lease system, the one suffering most from the abuse of private control, the state is extending its supervision and protection to persons subjected to that form of compulsory labor. The tendency is toward both state control and state use of convict labor, and the various phases of the plan of employment known as the public use system are the most complete expression of this development.

The significance of the present-day methods of employing compulsory labor will be better understood by reviewing more in detail the stages above indicated through which the systems of imposing compulsory labor have passed during the last twenty-five years. These stages or steps are: the abolition of the contract system; the adoption of the public account and piece-price systems, or some mixture of state account, piece-price and contract systems; and finally the displacement of these by the adoption of the state use and state control system for both prison and outdoor employment.

During and following the decade of the eighties, the abolition of the contract system in the various states took place in rapid succession.<sup>56</sup> In 1899 the contract was forbidden by eighteen states and territories, including the District of Columbia.<sup>57</sup> In 1905, twenty-eight

<sup>55</sup>Annual Rept. N. Y. Pris. Assn. 1911, pp. 53-4.

<sup>56</sup>The contract system was abolished in California in 1882, (cf. Eaves, *Cal. Lab. Leg.*, p. 360); in Pa., in 1883; in New Jersey and N. Y., in 1884; in Ohio, Illinois and Wyoming, in 1886, (cf. *Com. Lab.*, 1886, p. 507, ff.); and in Massachusetts in 1887, (cf. *N. P. A.* 1894, p. 63).

<sup>57</sup>*N. P. A.* 1899, p. 218, ff.

states restricted the use of the contract after the expiration of the existing agreements,<sup>58</sup> and in 1911 the last vestige of the employment of convicts under the contract had disappeared from twenty-six states, and was in partial use along with other systems in sixteen states, but remained the exclusive means of employment in only three states.<sup>59</sup>

Following the abolition of the contract system, state control of compulsory labor presented a variety of methods of employment, and a confusion of statutes in which various degrees of development of the several systems was present. In some states the public account system was adopted as the principal method of supplying compulsory labor, as for example in Illinois, Pennsylvania and Connecticut; but in other states, as in New York, Ohio, New Jersey and Massachusetts, the piece-price system was permitted in case sufficient employment to keep the prisoners steadily engaged could not be obtained under the public account system. In Wyoming, however, both the contract and piece-price systems, or any employment which offers competition to free labor was forbidden. The prisoners were not to be employed in any occupation whereby their labor should be let to or controlled by any outside person. Nor were they to be employed by any authority, public or private, upon any public work outside the prison, penitentiary, or reformatory in which such convicts were confined.<sup>60</sup> An act of the legislature of Nevada in 1885 directed that such convicts for whom employment could not be obtained under the state account system or at improvement of public grounds and buildings, might, at the discretion of the commissioners of the state prison, be let for hire upon private works. This statute, it is seen, permits the contract and public account system, and, at the same time, institutes a species of the public use system.<sup>61</sup>

The states which permitted the piece-price system found that, though the discipline of the prison was greatly improved by the resumption by prison officials of the control of the labor of criminals, the competition between convict and citizen labor was unmitigated.<sup>62</sup> The piece-price system was highly favored by wardens because it gave them control over the labor and discipline of the prisoners, and at the same time removed the responsibility of performing the function of an entrepreneur.<sup>63</sup> Labor organizations opposed the piece-price system

<sup>58</sup>Rept. of Com. of Lab. 1905, summary of laws, pp. 615-787.

<sup>59</sup>R. B. Hardy: Digest of Laws and Practices Relative to the Employment of Convicts.

<sup>60</sup>Rept. Com. of Lab., 1886, p. 603.

<sup>61</sup>*Ibid.*, p. 509.

<sup>62</sup>Such states were New York, New Jersey, Massachusetts and Ohio.

<sup>63</sup>N. P. A. 1894, p. 65, and Am. Ec. Assn. Pub. Sec. 3, Vol. 8, No. 3, p. 246.

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because it admitted private entrepreneurs into prison industry. The wares produced under both the piece-price and state account systems are necessarily entered upon the competitive market, and labor organizations soon learned that the menacing competition continued, and began to oppose both the piece-price and state account systems.<sup>64</sup> When, in the early part of the eighties the public account system was being agitated, its competitive nature was recognized by a few labor leaders, and it was opposed to some extent; but generally it was favored because it made the state the beneficiary of the labor of the prisoners and because it seemed to afford relief from competition. But when it was discovered that competition was not removed by the introduction of the public account system, labor organizations began a more general agitation for the non-mechanical employment of convicts and for the adoption of a preferred market for the products of mechanical occupations conducted in prisons.

The agitation of organized labor has been the chief factor in the abolition of the older systems and in the adoption of the state-use system, as well as the chief cause of the extension of public control under all systems of employment. This fact is somewhat at variance with the idea expressed by Dr. E. Stagg Whitin when he says that "as the control of the state upon prison industries has become greater, the power of labor to restrict them through the control of the legislature has also become greater."<sup>65</sup> This statement makes the restriction upon prison industries a concomitant of the extension of state control, but the reverse is a more accurate statement, for the state control followed as a result of the agitation for the restriction of prison industries. Organized labor has not only been alert in its efforts to guard against unequal competition and against the displacement by convict labor, but has also recognized the desirability of the extension of public control for humanitarian and penological reasons.

The progress in recent years in the resumption of control by the state of convict labor for public use is the dominant characteristic of the most recent stage of the development of the methods of imposing convict labor in the United States. But before entering upon a discussion of the operation of these recent methods of employing compulsory labor, a brief account should be given of the steps in the development of the practice of employing convict labor for the use of the public.

This practice has been brought about only gradually and has been

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<sup>64</sup>Ibid.

<sup>65</sup>Penal Servitude, p. 7.

in process of development since the time when mechanics began their opposition to the introduction of their trades into prison industry. In 1839 the journeymen and master cordwainers of the District of Columbia memorialized Congress on the detrimental effect of the prison shoe industry, and urged that the prison-made goods be applied to the use of the army and navy and other public institutions. In 1862 Congress complied with this request and set the precedent for the creation of a special market for the products of prison labor.<sup>66</sup> These statutes directed that the warden should, so far as practicable, employ the convicts in the manufacture of shoes for the army and navy, to be made as the departments should direct. Orders were to be given by the departments at the request of the warden, and the shoes were to be paid for at the customary rate for shoes of like quality. In 1886 the laws of Ohio sanctioned the employment of a portion of the convicts in the manufacture of articles used by the state in conducting the penitentiary; and the warden, under the direction of the board of prison commissioners, was empowered to procure machinery and prepare shop room for this purpose.<sup>67</sup> The statutes of Nevada in 1887 provided that prisoners employed in the boot and shoe shops of the state prison should make all the boots and shoes required to be used in the state prison; and the managers of other state institutions should be supplied with boots and shoes from the prison shops for the use of such wards of the state as they might have under their charge. If any surplus product remained, it was to be offered for sale at a price not less than the cost of the material, and in wholesale lots only.<sup>68</sup> Massachusetts adopted a similar law in the same year, 1887. Such articles were to be manufactured as were in common use in the several state and county institutions, and were to be sold at the wholesale price of goods of like kind and quality.<sup>69</sup> The revised constitution of New York as adopted in 1894, forbade the employment of prisoners "at any trade, industry or occupation wherein or whereby his work, or the product of his work, shall be farmed out, contracted, given or sold to any person, association or corporation,"<sup>70</sup> but granted that convicts might work for, and the products of their labor might be "disposed of to the state or any political division thereof, to any public institution owned or managed and controlled by the state, or any political division thereof." These new methods of employing convict labor de-

<sup>66</sup>Stone, Albert and Lovejoy: *Comp. Statutes, D. of C.*, p. 430.

<sup>67</sup>Rept. Com. of Lab. 1886, p. 581.

<sup>68</sup>Rept. of Com. of Lab. 1905, p. 713—Ch. 91 Laws, 1887.

<sup>69</sup>C. D. Wright, *N. P. A.* 1899, p. 216, ff.

<sup>70</sup>Rept. Pris. Assn. of N. Y. 1895, p. 895.

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manded by the constitution were formulated in the statutes in 1897 and again in 1901.<sup>71</sup> In 1899 twenty-four states provided for the state use features of the public account system,<sup>72</sup> and in 1905 thirty-four states made such provisions.<sup>73</sup>

The operation of the public-use system may be illustrated by a description of the plan adopted by New York in 1897. In this plan the prison industry is under the control of a prison commission which consists of three members appointed by the governor, by and with the advice and consent of the Senate.<sup>74</sup> The commission has the authority to require the officials of the state and its political divisions and institutions to furnish to the commission annually, for each ensuing year, estimates of the amount of labor and manufactured articles required by the respective political divisions and public institutions. Employment which shall not exceed eight hours a day, shall be for the purpose of supplying state and other public institutions with needed articles, and "for the purpose of industrial training and instruction, or partly for one and partly for the other of such purposes. \* \* \* The labor of the convicts in the state prisons and reformatories, after that necessary for the manufacture of all needed supplies for such institutions, shall be devoted primarily to the state and the public buildings and institutions thereof, and secondly to the political divisions of the state," and their public institutions. The superintendent of the state prison distributes among the penal institutions under his jurisdiction, the labor and industries assigned by the prison commission to these institutions. Due regard is to be had for the most advantageous distribution of the labor, and the prisoner is to be employed, so far as practicable, in occupations in which he will be most likely to obtain employment after his discharge from imprisonment. No articles manufactured in the prison shall be purchased by the state or its public institutions from any other source unless the state commission of prisons shall certify that the same cannot be furnished upon requisition; and no claim for the payment of goods purchased elsewhere shall be audited or paid without such a certificate.

The state-use system as adopted by New York has been subjected to the scrutiny of commissions from various states, and has furnished material for extensive discussion and debate. The advantages claimed for it are: (1) That it makes the least possible impression on the

<sup>71</sup>Rept. Com. of Lab. 1905, p. 723.

<sup>72</sup>N. P. A., 1899, pp. 218-219. These states are: Ark., Cal., Ind., Ia., Ka., Mass., Mich., Minn., Miss., Mo., Neb., Nev., N. H., N. J., N. Y., N. C., N. Dak., O., Pa., Tenn., Utah, Wash., W. Va. and Wis.

<sup>73</sup>Rept. Com. of Lab. 1905, pp. 615-787.

<sup>74</sup>Ibid., p. 724.

rates of wages and the prices of goods. To be sure, the quantity of prison-made goods consumed by the state and its institutions reduces the product of outside industry to an equal extent, "but there is no impression on the vital elements of industry—prices and wages."<sup>75</sup> The principle of the greatest diversity of industries coupled with a complete supply for the special market for any line of goods manufactured, best preserves the laboring class from competition with convict labor.<sup>76</sup> (2) Under the state-use system machinery is not used to any great extent. "The use of the powerful machinery is one of the most aggravating sources of annoyance to workingmen. The use of hand machines, or the production of goods by hand, reduces this source of attack to a minimum, and at the same time it enables the prison authorities to keep the prisoners almost constantly occupied in producing the goods required of them." (3) The educational benefits are greater under the state-use system than under any other. Hand labor is essential to the trade and technical education of the prisoners. Machinery is used only where it would be highly impracticable to perform the work by hand. (4) The state-use system has in some instances proved as remunerative as the older systems, but the financial returns are not the gauge of the desirability of the system, or of its productiveness. For whatever the prices may be as fixed by the board of control, the state, i. e., the people at large, get the benefit whether the figures show it or not. The employment of prisoners for public use has for its primary object, not a monetary return, but the reformation of the criminals, their instruction in elementary, technical and trade education and the lessening of the competition between convict labor and free labor. Wherever this system is adopted the question as to whether or not the prisoners should be self-supporting is answered in the negative. "The ignoring of the treasury except incidentally is the greatest advance in the question of prison labor." The middlemen's profit is saved to the prisons, and the institutions pay no more than retail prices. (5) The employment of the prisoners for the benefit of the state has a salutary psychological influence on the persons so employed. Their attitude toward their work is changed when they are giving it for the benefit of the state and no one person drives them. (6) The state-use system is a solution of the troublesome question of convict labor, for it works to the satisfaction of workingmen and manufacturers.<sup>77</sup>

Though the state-use system has many advantages, it at the same

<sup>75</sup>N. P. A. 1899, p. 226 [Address by C. D. Wright].

<sup>76</sup>In 1901 there were 26 separate industries and 75 trades carried on in the N. Y. prisons.

<sup>77</sup>A. F. of L., Rept. Ann. Convention, 1897, p. 22.

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time has several disadvantages which are generally recognized. (1) The volume of the demand of the preferred market may not be sufficient to keep the prisoners employed. This obstacle is, however, in a large measure overcome by extending the preferred market, by introducing a greater variety of occupations and by the application of trade and technical education whenever there are any idle prisoners competent of instruction.<sup>78</sup> (2) The prisoners are not sufficiently skilled and their trades are not varied enough to produce the articles needed in the public institutions; and this lack of ability will concentrate their labor on a few occupations, with the consequent unemployment. (3) In some quarters there has been opposition to the use of the prison-made goods because of a supposed stigma attaching to such goods. (4) The success of the state-use system is contingent upon the ability of the few men directing the prison industry. (5) It is a competition in another guise. (6) It is not permanent and is unprofitable in actual monetary returns.<sup>79</sup>

Not only has public control and public use of compulsory labor been extended to occupations carried on within prisons, but also to such labor imposed outside prison walls. Outdoor labor for criminals was resorted to extensively first under the lease system in the South. But as the revival of industrial conditions made possible the adoption of other means of employment, and as public sentiment demanded the suppression of the abuses of unrestricted private control of the labor and the person of the prisoners, outdoor employment of the convicts was either put under supervision and inspection,<sup>80</sup> or taken completely into public control. This outdoor labor under the control of the state may be applied solely for public use, as for example, building roads, improving public land or erecting public buildings; or it may be carried on for both state use and state account, such as the cultivation of public farms, the products of which, after satisfying the demands of the public institutions, are sold on the market. Quarrying and mining are conducted similarly to the farms, the surplus of the product not used by the public institutions being sold on the competitive market. The convicts hired out under the supervised lease system are employed

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<sup>78</sup>Mass. sought to obviate this difficulty by providing that, in the preliminary stage of the system, if goods should be manufactured beyond the demand, they might be sold on the open market under restrictions. [Laws Apr. 4, 1898 & N. P. A. Rept. 1899, p. 221.]

<sup>79</sup>N. P. A. 1899, p. 225, ff., and 1905, p. 258, ff.

<sup>80</sup>In South Carolina, until 1881, all able-bodied men were hired out to contractors, but by 1889 that was abandoned and the prison officials fed and clothed the convicts, and sent medical aid with the prisoners employed on railroads or otherwise under private control.



on railroads and other construction work, on farms, and in mines and quarries.

Some states have taken over completely the control of outdoor employment by abolishing the lease system, but in others a variety of systems exist, in all of which, however, state inspection and supervision is established, and private control and enterprise is greatly restricted. Outdoor employment for prisoners is gaining favor for both industrial and penological reasons, and it is urged that the labor of selected convicts be employed in reclaiming and improving public lands; draining swamps, damming streams; digging canals; preparing road material of stone, brick and tile; "establishing and maintaining ideal farms, typical wood lots, and model forest reserves." This work of conservation has a few examples in the various states, and very desirable results have been attained.<sup>81</sup> Outdoor employment solves the problem of light, ventilation and sanitation; it gives the variety of motion required for the restoration and maintenance of the health of the prisoners; it can be done with less previous knowledge and skill than most other forms of productive labor, and misdemeanants can in consequence be set to work at once. Outdoor labor is applied largely to public use, and competes in the least attainable degree with free labor.<sup>82</sup> It offers the most favorable conditions for effective classification of prisoners, and can most readily be managed to offer a premium for good conduct.<sup>83</sup>

The extension of public control of compulsory labor as exhibited in the various methods of employment in outdoor occupations and in manufacture for state use, is the prevailing tenor of the legislation of recent years. Along with this advance, various reforms, humanitarian, and relief measures are made to attach to compulsory labor which is coming to be regarded not as a punishment but as a means for physical and mental restoration, and as a medium for social readjustment of corrigibles. During the last three years the legislation shows definite tendencies toward the assumption by the state of its responsibility "for the use of prisoners on state lands, in state mines and as operatives in state factories; while in distribution the competition of the open market, with its disastrous effect upon prices, tends to give place to the use of labor and commodities by the state itself in its manifold activities." During 1911 no state legislature gave new powers of leasing or contracting for the labor of prisoners, and one only, Idaho, extended the field of the existing leases; twenty-one made some provision for the state's assumption and operation of industries; eight provided in

<sup>81</sup>Henderson, *Outdoor Convict Labor*, p. XIII; N. P. A., 1906, p. 329.

<sup>82</sup>American Prison Assn., 1911, p. 252, ff.

<sup>83</sup>N. P. A. 1906, p. 329.

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some manner for the states' assumption of the manufactured articles,<sup>84</sup> and six established laws for the regulation of prices and standardization of commodities.<sup>85</sup> The prisoners received compensation for their labor in six states,<sup>86</sup> and their dependent families are given aid in five states.<sup>87</sup> In the last named states, prisoners' families dependent on charity are relieved by the commissioners of charities at the rate of fifty cents for every day the prisoners work, but this relief is limited to five per cent of the value of all goods produced. Nevada gave the right to choose between working indoors or on the roads. Florida met the peonage issue by a provision for working off fines during imprisonment; and the antagonism of organized labor to the distribution of the products of the convict labor on the open market resulted in the passage in Montana, Oregon and California of laws requiring branding of convict made goods. The economic progress in prison labor is in the direction of more efficient production, more economical distribution, elimination of the unfair competition with free labor in the open market, and the curtailment of the slave system by the provisions for wages and for choice of occupations for those sentenced to compulsory labor.<sup>88</sup> During 1912 and 1913 the tendency continued toward the elimination of convict labor from the open market, and toward the assumption of control of this labor for public use.<sup>89</sup> Five states forbade the contract and lease systems;<sup>90</sup> five made provision guarding against competition with free labor,<sup>91</sup> and two authorized the formation of convict labor commissions on which labor unions are represented;<sup>92</sup> three provided for the remuneration of prisoners and the relief of their families,<sup>93</sup> and twelve extended former regulations or made new provisions for public use of prison-made commodities and for employment of convicts on public roads, in mining and quarrying, on public farms and at conservation work on public lands.<sup>94</sup> Other prominent reform measures are the parole system and aid to discharged prisoners in securing employment; establishment of farm colonies for the physical and moral rehabilitation of paroled men; the industrial farm colony

<sup>84</sup>Cal., Idaho, Ind., Mo., N. J., N. D., O., Wy.

<sup>85</sup>Cal., Ind., Mo., N. Y., O., Wy.

<sup>86</sup>Fla., Kan., Mich., Nev., R. I., Ind., Wy.

<sup>87</sup>Cal., Me., Mass., Mo., and N. J.

<sup>88</sup>Rev. of Lab. Leg. Oct., 1911, pp. 123-128. For a concise statement of the attitude of organized labor toward convict labor see *Annals*, Mar., 1913, pp. 127-141.

<sup>89</sup>Am. Lab. Leg. Rev. Oct., 1912, p. 486, and Oct., 1913, p. 411.

<sup>90</sup>Ark., Ia., N. J., O. and Ore.

<sup>91</sup>Ka., N. J. and Pa.

<sup>92</sup>N. J. and Pa.

<sup>93</sup>Ia., Ka. and O.

<sup>94</sup>Neb., Wis., Mass., Ia., Ka., N. J., Okla., Ore., Ky., Md., Miss., N. Y.

for "the detention, humane discipline, instruction and reformation of male adults committed thereto as tramps and vagrants";<sup>95</sup> probation for the feeble minded; commutation of sentence for good behavior; and protection for the prisoner by sanitation and the requirement of a physician's certificate for the employment of a prisoner in an unhealthful occupation.

There is not much unanimity of public sentiment on the question as to whether prisoners should be self-supporting or not, and the imposition of penal labor is urged from a variety of motives or intents. But the part labor plays in the psychology of the social offender is recognized generally, especially among penologists. This recognition is not, however, peculiar to the present time; for labor has, throughout the past century, been recognized as a means for the reformation of the criminal, and as a boon and humanitarian concession to those deprived of their freedom. Nor are the many humane, reform, preventive and relief measures a product of the day, but have evolved throughout the decades; and, indeed, some of them are a reversion to former practices and theories. Such are the relief of dependents and the sharing by the prisoner in the result of his labor, and the reformation of the offenders.<sup>96</sup> The chief differences lie in the means by which these aims are sought. There has been throughout the past century, as there is also today, much uncertainty, except among reformers, as to which of the objects of imprisonment should be uppermost in dealing with the social offenders—whether protection of society, punishment for crime, reparation, or the reformation of the criminal; or whether the prime object of imposing labor is to force the criminal by this form of punishment to earn his own living, or to provide a solace during the days of imprisonment and aid in the reformation of those whom society deems it expedient to deprive of their freedom.

Two forces have been active in shaping not alone the motive of imposing compulsory labor, but the form of its imposition and control as well. One is humanitarian and expresses itself in the effort to reform the social offender. The other is the reflex of utilitarianism and of material necessity, and expresses itself in the desire to make the labor of the prisoner as remunerative as possible and ignores the claims of "humanity." Neither one of these forces alone explains the development of the methods of controlling compulsory labor; for although the activities in securing the material necessities determine the form of

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<sup>95</sup>Am. Rept. Prison Assn. of N. Y., 1911, p. 41.

<sup>96</sup>Penn. Jol. of Pris. Disc. Vol. 4, p. 112. Rept. Inspectors of Prisons of N. Y., 1856-7, p. 9. Wines and Dwight, Pris. and Ref. Inst. U. S. and Canada, p. 44; David Dyer, Hist. of Albany Pen., pp. 9-10.

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institutions, and in a measure ideals, there is "certainly something more in history than a blind surge. Men act together because they see together and believe together. An inspiring ideal as well as the next meal makes history."<sup>97</sup> The stages in the development of the methods of controlling convict labor are symptomatic of the complex of these forces. Both the method and the spirit of imposing such labor have been in process of evolution, and although the forms of the systems under which penal industry has been carried on have responded to, and were determined in the essential features by, industrial conditions, the motive of imposing punitive labor today is determined less by economic necessity than by the ideals of humanity, unless it be said that reformation is held to be more remunerative to society than the compulsory labor of the offender. The economic demands upon the labor of convicts in the industrial status today is that his labor shall not be a menace in competition with free labor, and that his labor shall, if possible, restore him to citizenship capable of earning an honest living. The demand for freedom from the competition with convict labor has developed along with the growth of the factory system and the expansion of the market. The result of this industrial change was to bring the free labor of one community into competition with free labor of another community; and this together with the conflict between the worker in his endeavor to improve his condition through higher wages, and the consumer in his endeavor to purchase in the cheapest market, reacted detrimentally upon the standard of life of the worker. The effort of labor unions to regulate this conflict and to eliminate all low plane competition, and of reformers to establish social justice, gave rise so far as convict labor is concerned, to a new form of imposing compulsory labor; namely, that of state control and state use. This new system is not an isolated phenomenon, but is the culmination of a development through preceding stages in the plan of imposing and controlling such labor. Each of these stages of development is characterized by a dominant method of controlling compulsory labor and conducting the prison industry. These methods respond to the manner of the employment of free labor and the operation of free industry and to the motives which penal labor is meant to serve; and in consequence there appears an historic sequence in the system of controlling labor either as a punishment for crime or as a means for the reformation of the criminal.

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<sup>97</sup>Doc. Hist. of Amer. Ind. Soc. V. 7, p. 22.

## JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER AND ELMER A. WILCOX.

### A QUESTION OF PENALTY IN THE UNITED STATES COURT FOR CHINA.

*The United States of America v. Peter A. Grimes.* Criminal action No. 87; original paper filed at Shanghai, March 9, 1914. Edward H. Murray, acting clerk of court.

#### *Syllabus.*

1. The jurisdiction of this court to try and sentence one charged with an offense defined by the common law or by the codes of the District of Columbia or Alaska is now well established.

2. The minimum penalty should not ordinarily be imposed for a second offense of the same character.

William S. Fleming, Esq., Special United States Attorney for the Government.

Stirling Fessenden, Esq., for the defendant.

#### *Judgment and Sentence.*

Lobingier, J.

The accused pleads guilty to an information charging him with forgery of a check for fifty dollars, Mexican currency. The offense charged was one at common law (19 Cyc. 1370) and is also such by the codes of the District of Columbia (Sec. 843) and Alaska (Sec. 76) which latter under the decision of the Court of Appeals (*Biddle v. U. S.*, 156 Fed. Rep. 579) and of this court (*U. S. v. Grimsinger*, October 30, 1912) are applicable here. There is accordingly no question as to our jurisdiction and the procedure is settled by the decision of the Supreme Court in *Ross v. McIntyre*, 140 U. S. 453. The plea of guilty, therefore, leaves only the penalty to be considered.

Counsel for the accused asks for the minimum punishment because his client has pleaded guilty and by reason also of the comparatively small amount obtained by means of the forged check. These are considerations which would ordinarily have weight and, in the absence of countervailing circumstances, might justify the leniency sought.

It appears, however, from a showing made by counsel for the government upon the prisoner's first appearance for sentence, and admitted by the latter, that so late as August 10th last he was discharged from San Quentin Prison, California, after serving a sentence of one year for this identical offense under the name of John H. Rogers. As the crime to which he now pleads guilty was, according to the information, committed on December 6, it will be seen that he was repeating his former offense within four months of his discharge. Moreover, it even appears from the records of the Consular Court that the accused has been there convicted of, and has already served sentences of two and four weeks respectively for somewhat similar offenses (obtaining money under false pretenses) the first committed as early as October 4, 1913, and the second on December 9. Leaving out of account the fact that another information charging forgery on December 8 is pending against the accused, and by agreement of both counsel has been allowed to stand over (though this it seems may properly be considered in fixing the

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penalty; *State v. Wise*, 32 Oreg. 280, 50 Pac. 800) it sufficiently appears from the admitted facts already reviewed that he is not only no novice in crime, but that a penalty such as is now suggested has had little or no deterrent effect upon him.

Now the deterrent effect of punishment is the element which should be most controlling in determining its duration and severity. As expressed by the father of modern penology, Beccaria, "The end of punishment is nothing else than to prevent the repetition of crime." The present day theory of penalties, in other words, is preventive and not vindictive; but a penalty which leaves so little impression upon the offender that he repeats the offense within a few weeks cannot accurately be termed "preventive."

Indeed the fact that the accused is a second offender at all would seem to deprive him of the benefits of the minimum penalty. In the Codes of Civil Law countries, (e. g., Spanish Penal Code, Art. 10 (17, 18)) that is an aggravating circumstance which automatically raises the penalty and in Anglo-American jurisdictions it is an element to be considered in exercising the court's discretion. As was well said by Chief Justice Clark in *State v. Wilson*, 121 N. C. 650, 28 S. E. Rep. 417:

"Such matters ought justly and properly to be considered, as well as, on the other hand, a defendant's previous good character in lightening the sentence to be imposed. In England and some of the states of this country there is an "Habitual Criminals Act," which requires heavier sentences for such offenders. Whart. Cr. Pl. (9th Ed.) 934; 1 McLain, Cr. Law 28; *Moore v. Missouri*, 159 U. S. 673, 16. Sup. Ct. 179."

The minimum penalty provided for this offense by both of the codes above cited is imprisonment for one year but the maximum in the first is twenty years and ten in the second. And while in view of the decision of this court in *U. S. v. Grimsinger*, *supra*, these periods may not be controlling we are of the opinion, in the light of all the circumstances, that a term of three years would be the least that would serve to deter the accused or to afford a warning to others of like tendencies.

It has been suggested that the accused may be suffering from some form of criminal mania; but clearly this does not lessen the necessity of incarceration though it may require a special method of treatment during the period thereof and this is meanwhile recommended to the consideration of the prison authorities.

The defendant is accordingly sentenced to imprisonment for a term of three years to be served in the jail for American convicts in China at Shanghai, China, until provision is made by the government for his transfer to some prison in the United States; and it is directed that during the whole of said term he be employed at some useful labor. He is further adjudged to pay the costs of this prosecution.

By the Court, CHARLES S. LOBINGIER, Judge, Shanghai, China, March 9, 1914.  
CONSPIRACY.

*United States v. Foster, et al.*, 211 Fed. 206. *Conspiracy by postmaster to Defraud Government.* A conspiracy to secure for a postmaster a larger salary by purchasing at his office a large quantity of stamps for use outside the territory served by such office was not a conspiracy to defraud the United States, since as the statute makes the postmaster's salary dependent upon the gross receipts without excluding receipts from such sales, the postmaster was legally entitled

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to the salary which it was the object of the alleged conspiracy to secure, and a conspiracy to obtain by improper methods what one is legally entitled to is not punishable as a conspiracy to defraud.

### CONSTITUTIONAL LAW.

*Garland v. State of Washington*, 34 Sup. Ct. Repr. 456. Necessity of arraignment and plea—"Due process of law."

A conviction upon a second and amended information after a prior conviction under the original information had been set aside and a new trial granted was not wanting in the due process of law guaranteed by U. S. Const., 14th Amend., because no arraignment or plea was had upon the second information, where, without raising that specific objection before trial, the accused has made certain objections to such information, and was put to a trial thereon before a jury in all respects as though he had entered a formal plea of not guilty.

In answer to the argument that the United States Supreme Court had held the contrary in *Crain v. United States*, 162 U. S. 625, the court, by Justice Day, said in part:

"Technical objections of this character were undoubtedly given much more weight formerly than they are now. Such rulings originated in that period of English history when the accused was entitled to few rights in the presentation of his defense, when he could not be represented by counsel, nor heard upon his own oath, and when the punishment of offenses, even of a trivial character, was of a severe and often of a shocking nature. Under that system the courts were disposed to require that the technical forms and methods of procedure should be fully complied with. But with improved methods of procedure and greater privileges to the accused, any reason for such strict adherence to the mere formalities of trial would seem to have passed away, and we think that the better opinion, when applied to such a situation as now confronts us, was expressed in the dissenting opinion of Mr. Justice Peckham, speaking for the minority of the court in the *Crain* case, when he said (page 649):

"Here the defendant could not have been injured by an inadvertence of that nature. He ought to be held to have waived that which under the circumstances, would have been a wholly unimportant formality. A waiver ought to be conclusively implied where the parties had proceeded as if defendant had been duly arraigned, and a formal plea of not guilty had been interposed, and where there was no objection made on account of its absence until, as in this case, the record was brought to this court for review. It would be inconsistent with the due administration of justice to permit a defendant under such circumstances to lie by, say nothing as to such an objection, and then for the first time urge it in this court."

"Holding this view, notwithstanding our reluctance to overrule former decisions of this court, we now are constrained to hold that the technical enforcement of formal rights in criminal procedure sustained in the *Crain* case is no longer required in the prosecution of offenses under present systems of law, and so far as that case is not in accord with the views herein expressed, it is necessarily overruled."

*Riley v. Commonwealth of Massachusetts*, 34 Sup. Ct. Repr. 469. *Hours of Employment—Freedom of Contract*. The employment of women for more than ten hours in any one day, or more than 56 hours a week, in any manu-

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facturing or mechanical establishment, may be forbidden as is done by Mass. Laws 1909, chap. 514, sec. 48, which makes the exception that a different apportionment of the hours may be made for the sole purpose of making a shorter day's work for one day of the week, without infringing the liberty of contract assured by the Fourteenth Amendment to the Federal Constitution.

*Patsone v. Commonwealth of Pennsylvania*, 34 Sup. Ct. Repr. 281. *Possession of Firearms by Aliens*. The legislative assumption that unnaturalized foreign-born residents are peculiarly a source of danger to wild life cannot be said to be so unwarranted as to invalidate, as denying the equal protection of the laws, the provisions of Pa. Laws 1909, No. 261, p. 466, prohibiting the killing of any wild bird or animal by any such foreign-born person except in defense of person or property, and "to that end" making it unlawful for any such person to own or be possessed of a shotgun or rifle.

### DISTURBING A RELIGIOUS ASSEMBLAGE.

*Brown v. State*, Ga. App., 80 S. E. 26. *Self-Defense*. A statute prohibited the disturbance of a congregation of persons lawfully assembled for divine worship, either during the service or so long as any portion of the congregation remained upon the ground. The defendant was upon the church grounds during a protracted service searching the grounds for empty whiskey bottles. As the congregation dispersed one of the worshippers, "apparently in search of internal refreshment and comfort," asked the defendant if he "had any of that whiskey." The defendant objected to the intimation that he was engaged in the unlawful sale of liquor and threatened his questioner, creating quite a disturbance. The defense was that the accused was protecting himself against the imputation of crime. Held that while possibly one charged with crime of illegal liquor selling might be excused for resenting the words with a blow, this rule cannot be applied when the insult is offered at a time and a place when resentment would inevitably lead to the disturbance of a religious assemblage, even though this rule deprives the person insulted of his only opportunity for personal redress. The court distinguished this from an earlier case in which it held that one who was feloniously assaulted might defend himself even though to do so it was necessary to fire a pistol and in doing so a congregation was thereby disturbed.

### DYING DECLARATIONS.

*Reeves v. State*, Miss., 64 So. 836. *Disqualified of Revengeful*. In making a dying declaration the deceased said that defendant murdered him and added, "I hope the people will not let Barney walk around and not do nothing to him after he have murdered me like he have." Held that the declaration shows that at the time it was made the declarant was laboring under such strong feeling of hatred and revenge against defendant as to remove all presumption of its trustworthiness. Hence it was error to admit it in evidence, and the conviction was reversed.

### EMBEZZLEMENT BY ATTORNEY.

*Price v. State*, Okla. Cr. App., 137 Pac. 736. *Not Admitted to Bar*. Defendant was convicted of embezzlement under a statute providing for the punishment of attorneys who receive clients' money or property in the course of their professional employment and fail to pay it over. One defense was



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that the defendant had never been legally admitted to the practice of law in the state. There was proof that he had been admitted to the bar of another state, and as a matter of fact he held himself out to the public as a lawyer and did practice law in Oklahoma, appearing as an attorney in a number of cases and accepting employment and receiving pay as an attorney in this case. The court said that while it was illegal to act as an attorney without being admitted to the bar, "the commission of one crime can never be pleaded as atonement for the commission of another crime \* \* \* if Price was attorney enough to accept employment to collect this money he is attorney enough to be punished for embezzling it." The conviction was affirmed.

### EXECUTION.

*Ex parte Lujan*, N. M., 137 Pac. 587. *After Void Stay*. September 25, 1908, the petitioner was sentenced to imprisonment at hard labor for two years. The judgment further ordered that if the petitioner should forthwith remove from the territory the commitment should not issue so long as he remained absent. He left the territory but later returned and July 17, 1913, the court ordered a commitment to issue because the condition of the stay-order had been violated. The petitioner was taken into custody and applied for a writ of *habeas corpus*. Held that the court had no power to stay the execution, as there was then no statutory authority for so doing; that a sentence is not satisfied until it has been actually served, hence it was immaterial that a longer period of time than that covered by the sentence had elapsed since it was imposed. Hence the commitment under the sentence was legal. The petitioner was remanded to custody.

### FUGITIVE FROM JUSTICE.

*Doren v. State*, Ind., 104 N. E. 500. *Right of Fugitive to Prosecute an Appeal*. Where the defendant in a criminal case subsequent to his conviction absents himself from the custody of the state and from its jurisdiction and becomes a fugitive from justice, he cannot prosecute his appeal.

### GAMING.

*People v. Stein*, 146 N. Y. Supp. 852. *Slot Vending Machine*. A machine for dispensing gum, whereby a player in return for a penny inserted in the slot receives one cent's worth of gum, and has a chance of receiving more gum or candy, depending on the channel in which the penny falls, is a gambling device which renders one who permits its operation in his place of business guilty of keeping a room to be used for gambling contrary to Penal Law, sec. 973, and who permits a boy under 16 to operate the machine guilty of permitting him to be in a situation likely to impair his morals under sec. 483.

### HOMICIDE.

*Commonwealth v. Exler*, Pa., 89 Atl. 968. *Murder by Attempted Rape*. As used in act of March 31, 1860, sec. 74, providing that a homicide committed in the perpetration or attempt to perpetrate a rape shall constitute murder in the first degree, the word "rape" is used in its common law sense, and means unlawful carnal knowledge of a female without her consent, and does not include statutory rape denounced in Act May 19, 1887, and there could be no conviction under such statute for murder in an attempt to rape a girl over 10 years old, without evidence of want of consent.

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### INDICTMENT.

*People v. Antonello*, 146 N. Y. Supp. 799. *Sufficiency*. An indictment, accusing defendant of the crime of murder in the first degree committed as follows, "the defendant, unlawfully, feloniously and of his malice aforethought struck deceased with a dirk, thereby inflicting injuries of which he died," does not state facts sufficient to charge the defendant with the crime of murder in the first degree as defined by Penal Laws, sec. 1044, since it fails to allege that the injury was inflicted with intent to cause death, and that intent can not be inferred from the fact that death ensued.

*Castleberry v. State*, Okla. Cr. Ap., 139 Pac. 132. *Date of Crime*. An indictment charged that the crime was committed "on the — day of May, A. D., 1911." A statute provided that the precise time at which the offense was committed need not be stated in the indictment. Another section provided that the indictment should be sufficient if it showed that the offense was committed prior to the time of its filing, the offense was clearly and fully set forth in ordinary and concise language and was stated with such a degree of certainty that the court could pronounce judgment according to the right of the case. Held that as the time was not a material ingredient in the offense charged, the indictment was sufficient under the statute. The conviction was affirmed.

### INSTRUCTIONS.

*Launier v. State*, Ga., 80 S. E. 5. *Broader than Indictment*. Defendant was indicted for the murder of infant "by choking, strangling and by beating and striking said baby boy." The trial judge instructed the jury that it would make no difference to the guilt of defendant whether he or his wife actually struck the blow or choked or smothered the child. The court held that on this indictment the defendant could not be convicted on proof that the child was killed in any manner substantially different from that charged. That "to smother is to stifle, to suffocate by stopping the exterior air passages to the lungs; to strangle is to suffocate by a pressure or constriction of the throat." As the judge instructed the jury to convict if the child was smothered it was prejudicial error. The conviction was reversed solely upon this ground; two judges dissenting.

*Remillard v. State*, Okla. Cr. App., 137 Pac. 370. *Presumption of Innocence*. On a prosecution for the illegal sale of liquor the court instructed the jury "if you find from the evidence that he did not sell, or assist in the sale, or give or otherwise furnish, or assist in giving or otherwise furnish the said liquor to the said Glen Hall then you should acquit him." It was held that this charge was contrary to the presumption of innocence because it required the jury to believe from the evidence that he was innocent before they could acquit him, while they should acquit him in case of a reasonable doubt, although they might not find from the evidence that he did not furnish the liquor.

*People v. Terrell*, Ill., 104 N. E. 264. *Credibility of Witness*. In a criminal prosecution, an instruction that the credibility of witnesses is a question exclusively for the jury, and that they have the right to determine from all the surrounding circumstances appearing on the trial which witnesses are the most worthy of belief, is improper, for the expression "circumstances appearing on the trial" might be taken by the jury to refer not to the evidence

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but to the conduct of the witnesses in the presence of the jury while they were not on the witness stand. But the case being clear, held that the giving of this instruction does not require a reversal of the judgment.

### MURDER.

*State v. Angelina*, W. Va., 80 S. E. 141. *Cause of Death*. The defendant inflicted a mortal wound on deceased. Within a minute or a minute and a half thereafter deceased shot himself in the head inflicting a wound not necessarily fatal. In about twenty minutes from the first injury, deceased died. The trial judge instructed that "if his death was not the result of the self-inflicted wound but that, if it had any effect, only hastened his death, the result of said mortal wound," the defendant was guilty. Also that if the defendant inflicted a mortal wound he was guilty "provided the shot fired by him really contributed either mediately or immediately to the death" of deceased, even though deceased "would have died from other causes or would not have died from the shot fired by defendant had not other causes operated with it." The Appellate Court said "if after a mortal wound is inflicted by one person, another independent responsible agent in no way connected in causal relation with the first, intervenes and wrongfully inflicts another injury, the proximate cause of the homicide, the latter and not the former is guilty of murder \* \* \* the rule is different where the agent so interposing is irresponsible." The court called attention to the inconsistency in the instruction which presupposes a mortal wound and says that the defendant would be guilty though the deceased would not have died from that wound had not other causes operated with it, and says that it is further open to the same objection that if there was a supervening responsible agency the defendant would not be guilty of murder. It suggests that "the proper theory of the state's instruction should have been a mortal wound by the defendant and that the self-inflicted injury by deceased, though it may have been the proximate cause of death, was not the act of an intervening responsible agent but of one rendered irresponsible by the wound inflicted by defendant and as the natural result of that wound the causing cause of the immediate death of deceased." The conviction was reversed because of these erroneous instructions.

The attention of the court does not seem to have been called to any prior cases involving this point, especially *People v. Lewis*, 124 Cal. 551, 57 Pac. 470, 45 L. R. A. 783. In this case the facts were almost the same as in the Angelina case, and the Supreme Court of California sustained the conviction upon the ground that the act of the deceased was a contributing cause to the death, though not the sole cause. It is well settled that the act of the deceased need not be the sole cause of death. Where a serious wound not necessarily fatal in itself, is followed by blood-poisoning, causing death, the courts are agreed that the man who inflicted the wound is criminally responsible for the death, for the reason stated by Lord Hale that he cannot apportion the blame. There is a tendency on the part of our courts, illustrated by the Appellate Court in this case, to overlook the principle that the defendant's act need not be the sole cause of death, where the intervening act of a guilty agent also contributes to that result. It is, of course, well settled that the person making the second attack is criminally liable if his act shortens the life of deceased. It should not follow, however, that the person making the first attack is immune from punishment, unless the second

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injury was the sole cause of death. If each of two wounds inflicted by two persons acting independently hastens the death of the victim, there is no more legal or logical reason for exempting the first assailant from responsibility than for exempting the second. Their liability to punishment does not depend upon the chronological order in which they made the attack, but upon whether the act of each did or did not shorten the life of deceased. The trial court evidently had this principle in mind in giving the charge, and it is submitted that the theory upon which this court acted is correct, and that upon which the appellate court acted is not.

### NON-SUPPORT OF MINOR CHILDREN.

*State v. Bess*, Utah, 137 Pac. 829. *Destitution*. The defendant's wife had obtained a divorce, with the custody of four minor children. During the next five months the defendant contributed only five dollars for the support of these children. With great difficulty their mother provided the commonest necessities of life for herself and for them, by working in a knitting factory, sewing, and acting as a nurse. There was evidence that the defendant could have contributed more to their support. The defense was that the children were not in "destitution and necessitous circumstances" as required by the statute, because they were supported by their mother. Held that the fact that the children were provided for by charity bestowed by relatives, friends, or charitable institutions, would not protect the father from the punishment imposed by the statute for failure to support them. The cases of *Poole v. People*, 24 Colo. 510, 52 Pac. 1025, 65 American St. Rep. 245; *People v. Malsch*, 119 Mich. 112, 77 N. W. 638, 75 Am. St. Rep. 381; *State v. Witham*, 70 Wis. 473, 35 N. W. 934; *Burton v. Commonwealth*, 109 Va. 800, 63 S. E. 464; and *State v. Waller*, 90 Kan. 829, 136 Pac. 215 were cited and followed. The cases of *Baldwin v. State*, 118 Ga. 328, 45 S. E. 399; *Williams v. State*, 126 Ga. 637, 55 S. E. 480; *State v. Thornton*, 232 Mo. 298, 134 S. W. 519, 32 L. R. A. (N. S.) 841, were overruled.

### PARDON.

*United States v. Burdick et al.*, 211 Fed. 492. *Pardon Before Conviction to Permit Testimony*. The president has the power to grant a pardon, though the person pardoned has never been charged or convicted of the offense. Hence, where a witness declined to testify before the grand jury on the ground that his testimony might incriminate him, and the president issued an unconditional pardon, the witness was thereby deprived of the right to claim the privilege, without reference to whether he accepted the pardon or not.

### SUFFICIENCY OF EVIDENCE.

*Foster v. People*, Colo., 139 Pac. 10. *Circumstantial Against Direct Evidence*. On a prosecution for larceny there was no direct evidence that the defendant stole the goods. There was evidence that he left the stolen property at a stable the morning after it was stolen, and that a roll of bedding found with the property belonged to the defendant. There was evidence in behalf of the defendant denying both of these statements and direct evidence to establish an alibi. The defendant was convicted. Held that the jury were judges of the credibility of the witnesses, and as there was sufficient substantial testimony to support the verdict it would not be disturbed on appeal.

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### TRIAL.

*Rain v. State, Ariz., 137 Pac. 550. Other persons in Jury Room.* The janitor and his assistant entered the jury room for the purpose of replenishing the supply of ice-water while the room was occupied by the jury and conversed with members of the jury. There was no evidence that this influenced their verdict. Held that the modern presumption is that jurors are honest and regardful of the obligations of their oaths, hence the burden is on any person charging dishonesty or corruption to produce evidence to support the charge. Without such evidence the verdict will not be set aside. The conviction was affirmed.

*People v. Becker, N. Y., 104 N. E. 396. Misconduct of Trial Judge.* During the trial of a capital case, the court continually imposed on accused's counsel, stated that he was becoming trivial, commanded him to sit down, told him that he knew better than to make objections, objected to his manner, which was in no way contumacious, refused to hear argument, unduly restricted the cross-examination of witnesses, and interposed objections of his own, and on one occasion, when accused's leading counsel pleaded weariness and asked that his associate might take his place in the cross-examination of a witness, the request was summarily denied, and on another occasion it was proposed as an apparent reason for denying counsel's request for an adjournment that the cross-examination be turned over to his associate. Every appeal to the court's discretion for an adjournment or for leave to re-open the examination of a witness to correct an inadvertent admission or utilize on cross-examination of a hostile witness newly acquired information or to call a witness who had been absent was denied, while applications of a similar character by the people were quite uniformly granted. At the close of the cross-examination of an important witness for the defense, accused's counsel requested permission to ask one question, but the court refused because "time is too precious." At the close of the examination of another witness, accused's counsel stated that he was too exhausted to conduct the cross-examination, to which the court replied, "Let us have no more about exhaustion, we have heard enough about that"; but after ascertaining that the district attorney had no more witnesses, and both counsel pleaded for an adjournment, the court adjourned. Held that the court was guilty of prejudicial misconduct which deprived accused of a fair trial.

### STATUTE OF LIMITATION.

*People v. Di Pasquale, 146 N. Y. Supp. 523. Conviction of Lesser Degree.* In view of Code Cr. Proc. Sec. 4, requiring a crime to be prosecuted by indictment, Pen. Code, Sec. 610, providing that, on trial of an indictment, there may be a conviction of the crime charged therein, or of a lesser degree of it, or of an attempt to commit it or a lesser degree, is a rule of pleading, merely doing away with the necessity of charging in such an indictment the lesser degree or attempt, and does not permit conviction under such an indictment, of an attempt, where, when the indictment was found, the finding of an indictment for the attempt was barred by limitations.

### TRIAL.

*State v. Brand, Minn., 145 N. W. 39. Improper Argument.* In an address to the jury the county attorney made statements which went beyond the limits

## JUDICIAL DECISIONS

of legitimate argument. No objection was made or exception taken until the end of the argument. Objection was then made to twelve statements, some of which were justified by the evidence, and defendant requested a charge that the jury disregard these remarks. This request was properly refused because it was too broad. The court told the jury not to be governed by what counsel on one side or the other said had or had not been proved but were to determine the facts from the evidence before them. There was no doubt as to defendant's guilt. The court said that it was not apparent how the improper language could have affected the result, and as the trial court had not deemed it of sufficient importance to disturb the verdict it was not prejudicial error. The order denying a new trial was affirmed.

### REFORM IN COURT SENTENCES.

Some time ago I wrote of a judge who sentenced a man to live and work on a farm until he should have paid the amount of his defalcation and made his remaining out of saloons and maintaining total abstinence the conditions of his probation.

I thoroughly believe in such a reform in sentences and think there should be more of this sensible method of dealing with defaulters, embezzlers, etc.

We read some time ago of a judge sentencing a man to support the widow of the man he murdered, and as the provocation and circumstances would fully permit of it the plan must commend itself to us as being very practical.

Now we have another California decision along this line that I feel is worthy of consideration. Judge White of the Superior Court of Los Angeles has sentenced a prize fighter and his trainer to three years in jail and the payment by each of a fine of \$500.00 for assaulting a policeman on the street.

Judge White suspended sentence and granted probation to the men on condition that the \$1,000.00 fines should be paid and that the prisoners while on probation should (1) not drink any intoxicants; (2) not engage in controversies; (3) not enter any saloons; (4) not go to places where they are likely to be tempted to break their probation; (5) that they should not stay out all night at any time within the term of their three years' probation. This seems rather drastic for prize fighters. If it provided also for them to work during the term of their probation it would commend itself as more sensible, and as a distinct improvement over a jail sentence.

WILLIAM I. DAY, Supt., California Prison Commission.

## NOTES ON CURRENT AND RECENT EVENTS.

### ANTHROPOLOGY—PSYCHOLOGY—LEGAL-MEDICINE.

**Expert Testimony.**—The following is the report of the Committee on Expert Testimony of the American Medical Association. It was presented in Chicago on Feb. 23, 1914, before the Tenth Annual Conference on Medical Legislation held under the auspices of the Council on Health and Public Instruction of the American Medical Association. The report as we have it here is taken from the *American Medical Association Bulletin* of March 15, 1914, pp. 166-169.—[Eds.]

Dr. Moyer, the chairman of this committee, in his report last year presented a general diagnosis of the present situation of medical expert testimony and outlined the plan along which the committee would work.

The chief desire of this committee is to submit not only a logically correct proposal but one that is workable in a practical way and that will stand the test of constitutionality. This last requirement is often not considered in the framing of proposals which involve the changing of legal procedure. One distinguished member of the medical profession expressed his attitude in the following way: "Why should we allow the constitution to stand in the way of intelligent reform?" Whatever may be one's opinion regarding the desirability of having rigid constitutions, they are at present the basis of our institutions, and experience has shown how difficult it is to secure amendments, particularly of those provisions which apply to certain phases of the present problem. As this committee desires to secure legislation that may be available for the present generation, it is endeavoring to work out a plan that will be upheld under a fair interpretation of the existing constitutions. In view of this fact it was thought desirable that I should present to you a brief discussion of the legal and constitutional problems involved in the various proposals that have recently been made relative to medical expert testimony.

Expert testimony is of two general kinds, viz., testimony as to facts and opinion testimony, and the admissibility of each rests upon different theories. The first kind of expert testimony is admissible because special skill and experience are necessary for the understanding of certain matters. Any person of ordinary intelligence can testify whether a man had a cut in his head, or whether there were yellow or brown stains on linen. But it requires special experience and knowledge to state what arteries, nerves, bones, etc., were injured by the cut, and to determine whether the yellow stains on the linen were due to urine or semen, and whether the brown stains were human blood. It is because the ordinary witness is incapable of understanding the particular matter that the expert is required, and for this reason it is necessary that his special knowledge be shown before he is permitted to testify.

As a general rule of evidence opinion testimony is inadmissible. The reason for this is that the facts being before the jury, it is for them to form a judgment and conclusion upon such facts. The rule against opinion testimony is a product of the jury system. Since in many instances it is impossible for the jury to form a judgment because of the difficulty of the question involved, the opinion of those skilled in that particular

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subject may be obtained for the assistance of the jury. For instance, the jury would be incapable of determining whether the cut in the head mentioned above would be likely to cause death, even though it had before it a description of the wound, hence the opinion of a medical man is of assistance to the jury. In the same way the jury would need the opinion of one skilled in real estate values in order to determine what a certain piece of property in the loop district of Chicago is worth. Thus the function of opinion testimony is the advising of the jury, rather than the proving of the case of one of the parties.

Though the reason for the admissibility of expert testimony, whether as to facts or opinion, is the same whatever the subject-matter involved is yet special problems arise in certain kinds of such testimony and the general question may be affected by the legal character of the proceeding. For instance, the problem of expert testimony, particularly of a medical character, is different in criminal cases from what it is in civil. This is due to certain constitutional privileges of the accused, chiefly the following: That his life or liberty shall not be taken without due process of law; that he is entitled to a trial by jury and cannot be compelled to incriminate himself. Under the last of these privileges the position of the expert witness for the state in a criminal prosecution is much more restricted where the question involved is as to the defendant's mental condition than it is where he is asked to testify as to the physical condition of the accused. Although the tendency of the decision is towards compelling the accused to submit to a physical examination by the medical witness for the prosecution, yet the accused cannot be compelled to submit to a mental examination or to answer any questions asked by the witness because this would violate the provision against self-incrimination. As a result of this, the physical examination without any mental examination is of little value in most cases where the mental condition is in question.

During the past few years many proposals for the regulation of expert testimony have been advanced by organizations representing the different learned professions involved. It is now proposed to discuss these different proposals from the legal point of view.

1. That the court be given power to appoint a disinterested witness. This proposal has appeared in two forms, (1) that such witnesses should be the only expert witnesses allowed to testify, and (2) that the appointment of these witnesses by the court shall not affect the right of both parties to call expert witnesses. The first form of the proposal would seem to be clearly unconstitutional as restricting the parties in the proof of their case. The recent decision of the Supreme Court of Michigan holding unconstitutional, as violating the provision against due process of law, a statute which provided that "in criminal cases for homicide where the issues involve expert knowledge or opinion, the court shall appoint one or more suitable disinterested parties, not exceeding three, to investigate such issues and testify at the trial, this provision not to preclude either prosecution or defense from using other expert witnesses at the trial," has seemed to offer a serious obstacle to the adoption of this proposal. The adherents of this proposal need not be discouraged, however, as certain objections which the Michigan court found in their statute can be remedied without affecting the general plan and the courts of most of the other states are likely to be more liberal



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in their interpretation of the constitution than was the Michigan court. If this proposal should be considered advisable, it is reasonably certain that the constitutional difficulties may be solved.

2. That a fixed group of experts shall be appointed or otherwise determined from which all expert witnesses must be chosen. Though this might be feasible in certain lines of professional activity, it would be impracticable in others. There is a greater diversity of opinion regarding the advisability of this proposal. One of the legal difficulties is that the law in prescribing the qualification for experts, has not required any professional connection with the subject, the test being, does the witnesses have the special knowledge and experience required? A statute providing for the selection of such a group would probably be held constitutional.

3. That expert witnesses be permitted to make a physical and mental examination of the person regarding whom they are to testify. The difficulty of this proposal, where the question involved is the mental condition of a defendant in a criminal case, has already been discussed. In all other cases it would seem practicable.

4. That the expert witness shall submit his testimony in the form of a written report. This plan is possible only where the testimony of the witness is as to facts and opinion based upon such facts. Where his testimony is purely opinion based upon facts testified to by others, there is no opportunity for the preparation of such a report.

5. That the expert witnesses shall consult and agree upon a joint report, the so-called "Leeds" method. There is no legal objection to this plan. A too-partisan lawyer might object to having his witness consult with the witness for the other side, and the witnesses themselves might have difficulty in agreeing. These considerations are, however, of a purely practical character. Where experts are appointed by the court a consultation and agreement by such experts would be highly desirable if not essential.

6. That the number of expert witnesses which each side may call shall be limited. This is possible where the witnesses are to give purely opinion evidence, but not where they testify as to facts. This difference is due to the distinctive character of these two kinds of testimony as set forth in the beginning of this report.

7. That commissions of experts be appointed for the determination of technical matters and that such matters shall not be submitted to the jury. For instance, it has been strongly advocated that in criminal cases where insanity is set up as a defense the jury should find only whether the defendant did the wrongful act and that a commission of alienists shall determine the responsibility of the defendant. In this proposal the true function of the medical expert is lost sight of. Criminal responsibility is a legal question which should be answered by the jury under proper instructions from the court. The function of the expert is to testify as to the mental condition of the accused. A constitutional question is raised every time it is proposed to restrict the functions of the jury in criminal cases.

The committee realizes that the success of any plan regulating the introduction of expert testimony depends upon the skill and co-operation of judge, witness and lawyer. It is impossible to frame any proposal that will accomplish good results without these. The present tendency in the legal profession is towards a less antagonistic attitude in the trial of a case, i. e., the adminis-

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tration of justice is not being regarded quite so much as a sporting proposition. Likewise the courts are becoming more liberal in upholding the constitutionality of reformative measures. Thus there is hope for the adoption and successful operation of a truly meritorious proposal. This committee hopes to be able to submit such a proposal in the form of a bill at the next meeting of this conference.

HAROLD N. MOYER, Chairman of the Committee, Chicago.

PROF. E. R. KEEDY, Northwestern University Law School, Chicago.

### Meeting of the Society of Anthropology, Sociology and Criminal Law—

The first convention of the society was held in Rome at the University, April 17-19, 1914. The following subjects were discussed: (1) The segregation of habitual offenders under indeterminate sentence, the protection of them and their families during the period of detention, and the proper conditions and procedure for their release. (2) The application of the science of criminal anthropology in the work of prevention by the police. (3) The personality of the convicted person under the new code of penal procedure. (4) The duty of society to recompense the person injured by a crime, and his right, under the new code of penal procedure, to be a party in the criminal prosecution and to have his damages ascertained. Among those participating in the discussions were Professor Enrico Ferri of the Scuola d'Applicazione geuridico criminale, of the University of Rome; Raffaele Garofalo, President of the Court of Canahun of Rome; Augusto Tambarini, Professor of Psychiatry, University of Rome; Mario Carrara, Professor of Legal Medicine and Criminal Anthropology, University of Turin; Agyato Berenini, Professor of Criminal Law and Procedure, University of Parma; Leonardo Bianchi, Professor of Psychiatry, University of Naples.

E. A. GILMORE, State University, Madison, Wis.

## COURTS—LAWS.

**The Public Defender of Los Angeles County, Cal.**—Following is a copy of a letter from the Public Defender of Los Angeles, Cal., addressed to A. C. Umbreit, Esq., of Milwaukee. The opening paragraph explains the occasion of the letter. The copy of the provisions of the charter of the county of Los Angeles referred to in that paragraph is found at the conclusion of the letter.—[Eds.]

Los Angeles, Cal., March 17, 1914.

A. C. Umbreit, Esq.,

Chairman Committee on Public Defender,

Railway Exchange Building, Milwaukee, Wis.

Dear Sir:

"In response to the request of the special committee of the Milwaukee Bar Association appointed to investigate the matter of the appointment of a public defender for Milwaukee, I am enclosing a copy of the provisions of the charter of the county of Los Angeles prescribing the duties of the public defender.

"While the legislature of the state has authority to create the office of public defender for all counties no action has been taken by the legislature up to the present time except to ratify the charter of Los Angeles county

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providing for the office. Under our constitution each county can form its own charter, which must be adopted by vote of the people and ratified by the legislature. During the last year the people of Los Angeles county adopted a charter providing for the appointment of a public defender and his deputies from the eligible civil service list. Pursuant to this charter provision I was appointed on January 6, 1914.

"The work of the public defender is naturally divided into two classes, the criminal and civil. In criminal matters we defend every person accused of any offense in the Superior Court who is financially unable to employ an attorney, upon his request or upon order of the court. It is also our duty to prosecute appeals in proper cases. No provision is made for our appearance in the police courts. Probably this is explained by the fact that the city of Los Angeles has its own charter providing for police courts. The city provides prosecutors for all cases involving violations of the law which amount only to misdemeanors, whether they are violations of city ordinances or of the state law. An amendment to the city charter would be necessary to provide for the appearance of the public defender in the police courts of the city. However, a voluntary public defender is now at work in the police courts. It seems to me that there is need for a public defender in every court where the government provides an attorney to prosecute.

"When we bear in mind that in nearly every criminal prosecution in this state one citizen is arrested upon the complaint of another, and that the law provides an attorney to take the side of the complaining witness, it is astonishing that no provision has been heretofore made for a more effective method of bringing out the points in favor of the accused. It cannot be doubted but that the public demands convictions of the district attorney, demands that he prosecute vigorously, demands that he represent but one side. Indeed, the law itself prescribes the duties of the district attorney, provides that he must prosecute and must present the evidence against accused persons. No provision is made, however, for him to defend. The law has always recognized the right of the accused to be defended. If he has money he can employ his own counsel and conduct his own defense. If he has no money the court appoints an attorney for him. In a great majority of cases these appointments fall to inexperienced youths who seek the appointment for the purpose of gaining experience. In some cases more experienced attorneys are appointed but they receive no remuneration for their work and it is hardly to be expected that they will give the work the same degree of diligence and care that should be given. In fact, experience has shown, and there is no reason whatever to doubt it, that a person accused of crime, under the old system, could not expect to get adequate representation. The government employs a skilled, experienced and ambitious attorney to present the case against the accused. The defendant has a right to enter the court on an equal footing with his adversary. Under the old system it was impossible for the defendant to get the equal protection of the law.

"It has been contended by some that the district attorney himself can safeguard the interests of those who are unable to employ counsel. Doubtless more care is taken by prosecuting officers in cases against the indigent than in other cases, and very properly so. Both in theory and in practice, however, it is impossible for the prosecutor to represent both sides. Under the law it is his duty to prosecute; no provision is made for him to defend. If one officer

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could act for both sides there would be no need for either a prosecutor or a defender, for the judge could handle the matter alone. In practice the prosecutor cannot represent the accused, for long usage has so defined his duties that public opinion, the ultimate arbiter in popular government, demands a vigorous prosecution.

"Prosecuting attorneys daily are pitted against able lawyers employed by accused persons of means. They necessarily become skillful, wary and vigorous in the conduct of the cases. It would not be natural to expect a sudden change from the habit thus formed upon the arraignment of an indigent defendant. In a decision rendered during the month of February last by the Supreme Court of this state, the following language is used:

"The prosecutor improperly commented upon the action of the defendant in objecting, as he had an undoubted right to under the law, to his wife's testifying against him. It is to be regretted that prosecuting counsel, in the heat of contest and the desire for victories, sometimes forget that the function of a district attorney is largely judicial, and that he owes to the defendant as solemn duty of fairness as he is bound to give to the state full measure of earnestness and fervor in the performance of his official obligations.

"Again and again this court has commented upon the course of prosecutors in this regard, but instances of such conduct are all too common. We have no doubt that in the present case the prosecutor's demeanor and his improper questions deprived the defendant of that fair trial which ought to have been his under the law. For this reason he should not be subjected to the result of a verdict so induced."

"Truly in such a case, if the defendant had been unable to employ counsel, justice would demand that a competent attorney safeguard his interests."

"As an example of the work which the public defender can do, I might cite the case of Fred Lacy. This man had pleaded guilty in the Superior Court at San Jose of the crime of forgery and was released on probation by the judge, who knew that there was a charge pending against him for a similar offense in Los Angeles County. The San Jose judge released the man in view of both of these charges, but, under the law, he could not free him from the charge in Los Angeles County and was compelled to turn him over to the Los Angeles officer. Lacy was brought to Los Angeles seriously afflicted with tuberculosis. Life at the county jail was fast tearing him down, yet it seemed that he would be in jail from one to two months before his case could be disposed of. He learned of my appointment, through a turnkey at the jail, and his was one of the first cases that I handled. Upon his telling me the facts I went to the district attorney's office and the district attorney very promptly took steps to have the charge against him dismissed. Lacy was in great need of hospital treatment and we helped him get into a hospital. Probably a month or two in jail would have been so injurious that he could not have recovered.

"Most of the accused persons are afraid to talk freely with the district attorney. In many cases their troubles can be adjusted, or investigation will show that they should be charged with lesser offenses to which they would be willing to plead guilty. The public defender can hear their stories and try to bring out justice for all.

"I have found the district attorney and his deputies all very willing to cooperate with the public defender in his work. Both officers should remember that we are the servants of all the people, that both want to bring about the same

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results, the fair administration of the law. While the law imposes upon the district attorney the duty of presenting the evidence against the accused person, and upon the public defender the duty of presenting the evidence in his favor, the law does not ask the district attorney to convict an innocent person, nor does it ask the public defender to acquit a guilty person. Both can present their respective sides in the most intelligent and fair manner. It is then a question for the jury and the court to decide.

"Often a defendant in a criminal case is willing to plead guilty, when in fact he has committed no crime or is mentally irresponsible. The plea of guilty involves questions of law as well as fact, but the accused does not realize this. In one case in which I defended a man accused of murder he admitted killing his opponent and through ignorance was willing to enter a plea of guilty. There would be danger that an attorney might allow the plea to be entered and thus save himself labor. Upon investigation, however, it was shown that the man had killed in self-defense and was acquitted. In some cases the defendants are insane, yet their insanity is not apparent except upon investigation. In the short time I have been in office two persons accused of crime have been declared insane and sent to state institutions. In both cases the accused had committed the acts of which they were charged.

"Cases have been brought to my attention where certain lawyers have hung about the jails offering their services to men accused of crime and who were unable to send for the attorneys they really wanted to employ. Some of these attorneys have taken the few cents that the accused might have upon his person at the time of his arrest, then, after taking over the case, have advised the defendant to plead guilty. I heard of one case where the attorney seeking employment obtained a promissory note from the defendant for a large sum of money. He then advised the defendant to plead guilty with the hope of getting released on probation. This was done, but upon the defendant's being allowed to leave jail he was hounded by the attorney who held the promissory note alleged to be due for services which were never in fact rendered.

"One of the most important things the public defender can do is to give advice to the poor concerning their rights, to be always ready to be at their call so that they may know there is an officer with whom they can talk freely.

"Many a man accused of crime does not know that the law allows him ample time to make a defense, that he cannot be held indefinitely without a charge being filed against him and that the state must prove certain well defined things in order to make out a crime of vagrancy. Many innocent men plead guilty because some official offers them the minimum fine.

"Even when the accused pleads guilty and asks for probation, the public defender can be of great assistance. As an example I might cite the case of *People v. Harris and McCormick*, two men who were arrested in Pomona for burglary in the early part of January. I was called upon to defend these men and both pleaded guilty. It was ascertained, however, that they were nearly starved at the time they committed the offense; that they had gone from house to house seeking employment and asking for food. They asserted that they entered the house for the purpose of stealing something to eat. I investigated to find if their stories were true when they told of seeking employment and food. I wrote letters to the people whose names they gave me as having provided work or food for them and I found in each case that these men were telling the truth, that they had in fact diligently tried to get something to do.

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The result was that one of the men was given a much shorter sentence than he otherwise would have received and the other one was released on probation. It is entirely probable that if the court had appointed some attorney who happened to be in court at the time these men were arraigned, no effort would have been made to investigate their stories to show if indeed they were entitled to consideration on account of the fact that they were pressed for something to do, were unable to find work and were indeed in want.

"Probably the class of cases that calls for the services of the public defender most is that class where it is necessary to do some investigating to verify the stories of the accused and to find witnesses in their behalf. Often a defendant, upon asserting his innocence, will give the names of witnesses who might testify to facts tending to substantiate his contention. If no means are provided for making investigation or for examining witnesses for him, and if the attorney appointed by the court and working without pay does not care to do this work, the accused will be left without proper representation and all the facts will not be brought to the attention of the jury.

"In the issue of *The Outlook* of January 24, 1914, there is an article on 'The Schwitofsky Case.' The editor, after citing two cases in which men were unjustly convicted without a proper defense, quotes with approval Mr. Samuel Untermyer, who had long ago suggested that there should be a public defender.

"Too often criminal prosecutions are commenced by people actuated by malice. They impose upon the district attorney or the justice of the peace in having warrants issued. The complaining witness often slights the most important points, the points that tell most favorably for the accused. The result is that the warrant is issued and the powerful forces of the government are put into operation against some indigent person. The government surely should provide some method for the man without means to bring his side of the story before the court.

"I am happy to state that thus far nearly every person accused of crime in the Superior Court, upon being arraigned, has called for the services of the public defender when informed that such an officer was available. This speaks eloquently of the need of such an official. During the period from January 7th to March 13th, inclusive, our office appeared in sixty-four cases in which the defendants were accused of felonies.

*Civil Cases.*—"Hardly less in importance is the civil side of our work. The number of calls for our assistance in civil matters has certainly been surprising. An average of nearly twenty cases a day have come to the office since its creation. While the charter provides that we shall take claims not over one hundred dollars for poor people, we find that we are asked for advice on nearly every branch of the law. Domestic troubles seem to cause a great deal of unhappiness and many people who are in domestic difficulties are entirely unable to gain the advice of someone conversant with the law. While the law does not prescribe that we shall do anything whatever with these matters, we find that, with the exercise of discretion, we can give advice in many cases where the worthy poor are entitled to it. In fact, our office has been turned into what might be called a legal county hospital. We are trying to remember that we are working for the less fortunate of humanity.

"The costs of securing redress through a paid attorney would, in many cases, be greater than the result would be worth. This condition runs through nearly all of the cases we handle. We find that a letter to the opposite

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party will, in a majority of cases, bring results and enable us to adjust disputes. Both parties, in many cases, would necessarily lose if a suit were filed and each side had to pay a lawyer, for the amount involved would be insufficient to justify the expense. Our office tries to look at both sides in each claim and to tell the parties what are their rights. In case of an honest dispute, if we think the party asking for our advise has an enforceable demand we are ready to take the case into court. We much prefer to adjust matters out of court and find that even a telephone call will often bring about the desired result.

"We have tried to so conduct our office that it shall not be an instrument of injustice, even though at times parties have a strictly legal redress. One young man wanted us to sue a cigar dealer who had offered to pay about half of the claim, but insisted that the plaintiff had shaken dice for the other half and was in his debt. Both parties admitted this condition, but the plaintiff asserted that the gambling debt was not a legal set-off. We informed him that we would not sue for any sum except what was morally due.

"Wage claims are the most important of those that are presented to our office. A number of men have asked our services when they have not had even the price of a meal, to say nothing of funds with which to pay the costs of filing a suit or employing a lawyer. Argument is not necessary to convince that there is a great demand for a free legal bureau to aid men such as these, and it is one of the most pleasant parts of our tasks to try to do something to aid this class of litigants. Our office holds that as a rule a man having a claim for labor under one hundred dollars is not financially able to employ an attorney to collect it. The office indeed was given its civil jurisdiction with the main object in view of securing these small labor claims for people without adequate means to enforce their payment. These small claims for wages are generally more important to the poor than large sums to the wealthy. We have found that the employers in nearly every case are anxious to settle when the public defender takes up the claim for the employee.

"I have been agreeably surprised to know that very few people have tried to impose upon the office. Nearly every person who has come for our assistance in civil matters has had a just claim and has been really unable to employ an attorney. Of the few who have come when they were able to employ an attorney the greater part were sent by other officers who were not thoroughly informed of the charter provisions creating our office.

"The law gives the laborer the right to file a lien for work performed in the course of the construction of a building. This lien at least clouds the title of the landlord and is a drastic procedure. We have made a practice of informing the owner of the building of the request of the laborer that we file the lien, in the hope that such a drastic remedy can be avoided. In fact, we have found that a courteous letter written to the defendant in most cases avoids the necessity of an action in court.

"It is a prevalent opinion among many of the working people of this country that the courts are only for the wealthy. In a limited measure this is true, for hundreds of cases come up in every large city where poor people are compelled to forego their rights for the simple reason that the expense of enforcing their rights is too heavy a burden. Our office is one of the most efficacious means for obtaining justice for the poor man and of making the courts truly the courts of all the citizens.

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"The expense of operating the office cannot be considered as heavy in view of the amount of work accomplished. There are now in the office of the public defender of this county four lawyers and two assistants. The total monthly expense is less than one thousand dollars. When we consider that there are about three-quarters of a million people in Los Angeles county and that the county is one of the richest in the Union, it cannot be considered that the expense is great enough to be a serious objection to the creation of the office.

"Much interest has been aroused throughout the country by the creation of this office in Los Angeles. Bar associations, judges and prominent attorneys from nearly every large city in the United States have written for information on the subject and a number of the leading magazines are giving publicity to the work. In almost every instance the comment has been favorable. In Portland, Oregon, the Bar Association has taken up the question vigorously and has appointed various members of the association to take their turn in acting as volunteer public defender. The lawyers of Houston, Texas, are doing the same thing and leading officials of that state are preparing to present a bill to the legislature for the creation of the office.

"In Los Angeles we have met with the good-will of the entire community and our work is being aided wherever possible. The judges frequently send for us to investigate cases or to take up matters that cannot be handled by other officials." \* \* \* \*

Yours very respectfully,  
WALTON J. WOOD,  
Public Defender, Los Angeles.

## PROVISIONS OF COUNTY CHARTER, LOS ANGELES, CAL.

Sec. 23. Upon request by the defendant or upon the order of the court, the Public Defender shall defend, without expense to them, all persons who are not financially able to employ counsel and who are charged, in the Superior Court, with the commission of any contempt, misdemeanor, felony or other offense. He shall also, upon request, give counsel and advice to such persons, in and about any charge against them upon which he is conducting the defense, and he shall prosecute all appeals to a higher court or courts, of any person who has been convicted upon any such charge, where, in his opinion, such appeal will, or might reasonably be expected to, result in the reversal or modification of the judgment of conviction.

He shall also, upon request, prosecute actions for the collection of wages and of other demands of persons who are not financially able to employ counsel, in cases in which the sum involved does not exceed \$100, and in which, in the judgment of the Public Defender, the claims urged are valid and enforceable in the courts.

He shall also, upon request, defend such persons in all civil litigation in which, in his judgment, they are being persecuted or unjustly harassed.

The costs in all actions in which the Public Defender shall appear under this section, whether for plaintiffs or for defendants, shall be paid out of the County Treasury, at the times and in the manner required by law, or by rules of court, and under a system of demand, audit and payment which shall be prescribed by the Board of Supervisors. It shall be the duty of the Public Defender, in all such litigation, to procure, if possible, in addition to general



## PROVISIONS IN NEW JERSEY AFFECTING PRISONS

judgments in favor of the persons whom he shall represent therein, judgments for costs and attorney's fees, where permissible, against the opponents of such persons, and collect and pay the same into the County Treasury.

### PENOLOGY

**New Provisions in New Jersey Affecting Prisons.**—Prison reform in New Jersey has taken several forward steps as a result of a series of bills enacted into law during the session of the Legislature just closed.

Governor Fielder in his inaugural address, January, 1914, on the subject of prison reform, said:

"The sentiment of these enlightened times demands a change in the care and treatment of prisoners in our penal institutions. The idea that offenders against our laws can be reformed by confinement and punishment alone, is obsolete. Confinement within prison walls and harshness and severity never has and never will check crime, and the proper treatment of convicts must receive more intelligent thought. Criminal tendencies are very frequently the result of mental or physical defects and the lack of education, decent surroundings and bodily nourishment. The state should be more concerned in ascertaining and, if possible, removing the cause for crime, than in administering punishment. With first offenders especially, the state can hope for better results from a more thoughtful and modern system of treatment. A careful mental and physical examination should be made under the direction of the prison authorities of each person sent to a penal institution, and a serious attempt made to cure or relieve the ills that such an examination discloses. Prisoners should be placed at some occupation which they can continue after the expiration of their sentence, for the benefit of their physical selves and to help pay for their maintenance while in confinement and to fit them to earn their own livelihood after discharge. Prison labor contracts should be terminated as speedily as possible and the prisoners placed at work under state direction and an effective state-use system installed. We have taken a step in this direction with the inmates of our state's prison, but sufficient funds have not been made available by the Legislature to make much more than a start. Placing men at work upon the roads, the purchase of a farm and a quarry (the latter not yet actually acquired), will provide for some of the prisoners, but more funds are necessary for these purposes, as well as for the industrial employment in shops of those who cannot be placed at labor outside the prison.

"Intimately connected with this, is the establishment of a business-like plan for the management of prison labor and the disposition of the products thereof. There are too many boards and officials connected with this work and with prison control, and this results in friction, a loss of efficiency and unnecessary expense. I recommend that the Prison Labor Commission and the Board of Inspectors of the state's prison be abolished and that a new board be created to have entire charge and management of the state's prison and of all places at which convicts are put at work; that the keeper of the prison be placed under the authority of the board, as the superintendent of the prison, and be relieved from responsibility for the escape of those engaged at outside work, and that this board have control of the disposition of products of convict labor. Such a plan should lead to better results in the performance of the state's duty to its criminal class, as well as to economy in operation."

The new legislation provides for a needed change in the method of organization of the state prison. The division of authority heretofore existing as between the board of inspectors, the principal keeper and the supervisor, is abolished. The board of inspectors will have full authority so far as the

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general organization and policy of the prison is concerned, the principal keeper becoming directly responsible to the board for the immediate management. One of the chief difficulties in securing this remedial legislation was due to the fact that the principal keeper is a constitutional officer appointed by the governor. While the selection of this officer must continue as provided for in the constitution, he, by the new law, will become directly responsible to the board of inspectors for the conduct of the prison. This will be true also with the supervisor, who up to now has had charge of the business department, including the assignment of prisoners to their work. The new board of inspectors—six men—will have full control over the prison proper, and over all road camps, the farm and the quarry.

Another of the new laws abolishes the parole board, which under the act of 1913 was composed of the principal keeper, the chaplain and the resident physician. The new board will be made up of the board of inspectors, which under the new law is given "full and final authority to grant and revoke paroles." Heretofore the court of pardons, which is composed of the governor and the court of errors and appeals, has been required to pass upon all paroles. This court is now divorced altogether from the parole work. The governor is also relieved from the necessity of approving the work of the parole board. The intent of the new law is to place the responsibility upon the board of inspectors.

Among the new provisions of the law as now amended are the following:

In establishing a minimum sentence, courts may fix such minimum at not less than one year nor more than two-thirds of the full maximum term; and imprisonment for life is construed to be a minimum term of fifteen years. This latter provision brings the New Jersey law into accord with the law of the United States as to life prisoners.

The amended law now provides that the parole board

"shall not receive and consider any outside petition for the release of any prisoner upon parole or grant a hearing to any person or persons interested in securing the parole of any prisoner other than the prisoner himself, and no prisoner shall be paroled by said board who shall not have given satisfactory evidence of his ability and purpose to live at liberty without violating the law. No prisoner shall be released upon parole until suitable work shall have been secured for him or until suitable arrangements have been made for him that will assure to him an opportunity to fulfill all of his parole obligations."

Also it is provided that any prisoner who is returned for violation of parole

"shall have opportunity to appear personally before such board at its next regular meeting and at such hearing the said prisoner shall be advised by said board as to the reasons for his return."

Another of the new laws provides for the reorganization of the present prison labor commission. Under the law of 1911 New Jersey declared for the abolition of contract labor and the substitution therefor of the state-use system. That law provided for a commission whose duty it should be to make a general investigation of the needs of the state and to assign the industries to the state prison and the state reformatory. They were also to have general direction as to the disposal of all products manufactured or produced. The general scope of the commission's work remains the same as originally provided for. The commission as re-organized will consist of the commissioner of charities and corrections, one member from each of the prison and reformatory boards, and three citizens to be appointed by the gov-

## PROVISIONS IN NEW JERSEY AFFECTING PRISONS`

ernor, all to serve without compensation. The commission is authorized to dispose of any surplus articles or products in the open market upon such terms and regulations as the commission may determine. The original act provided for the payment of earnings not to exceed fifty cents a day to prisoners employed under the state-use plan, and who had dependent upon them wives or children. The amended act directs the board of inspectors of the prison and the board of commissioners of the state reformatory to establish a wage system as follows:

"\* \* \* shall establish a wage system under which the inmates of their respective institutions shall be employed, and may expend or direct the expenditure of the earnings of any prisoner for the following purposes or any of them:

- (a) For the care and maintenance of said prisoners.
- (b) For the benefit of the prisoner after his release on parole or discharge.
- (c) For the repayment of the costs of trial in an amount not to exceed twenty-five dollars.

The wage system here provided for shall include within its provisions all prisoners employed in any work or service necessary for the maintenance of said penal, correctional and reformatory institutions, or their inmates."

The only bill that failed of passage was one amendatory to the act under which prisoners may now be employed on road work under the direction of the road commissioner. The conflict of authority heretofore existing between the several heads of the prison have made it difficult for the road commissioner, Col. E. A. Stevens, to establish this work on a sound and economic basis. The failure of the bill referred to is not likely to jeopardize the continuance of the outside work, which it is hoped can be continued and extended under the original act of 1912.

The legislature appropriated \$50,000 for the development of the state-use system within the prison. This money will enable the prison authorities to commence work under the state-use system. About 700 of the prisoners are still employed under the contract system, but these contracts, unless it is found necessary to extend some or all of them in order to keep the men employed, will expire on July 1st of this year.

Some additional provision was made for the development of the farm work. It is quite possible that by the beginning of summer 150 prisoners may be housed and worked at the farm, which was purchased last year. If the road work can be developed along the lines already laid down by the road commissioner, New Jersey should have at least 300 men employed in this work by the middle of the coming summer. Two road camps have been in operation for nearly a year. They each accommodate about 35 prisoners and the results so far have been very satisfactory both as to the conduct of the men and the character and amount of their work. The state is also about to take title to a quarry where it is proposed to establish a branch of the state prison for the purpose of employing from 50 to 100 in the preparation of road and building material.

While the people of New Jersey are becoming more intelligently and deeply interested in prison reform matters, and while many of them were active in supporting the new measures, the legislation accomplished this year would have been impossible except for the personal and persistent interest of Governor Fielder.

JOSEPH P. BYERS,

Commissioner of Charities and Correction, Trenton, N. J.

## FEDERAL OFFICE OF PRISONS

**Committees on the Federal Office of Prisons—Aims.**—The object of the committee of the National Committee on Prison Labor on the Federal Office of Prisons is to conduct a campaign for the establishment of an office under the federal government which shall have control over all federal prisoners and power of inspection over penal institutions, in which they may be confined; and which shall also act as a bureau to make available to local penal authorities the results of the best scientific research in penal and co-ordinate fields. The chairman of this committee is James Gordon Battle, Esq., of New York city.

This Federal Office of Prisons should be established under the Department of the Interior. The federal prisons are at present under the control of the Department of Justice, final authority resting in the attorney-general. Under special instructions from Congress the secretary of the interior has, from time to time, acted in conjunction with the attorney-general in the selection of prison sites and has even had control over the erection of certain prison buildings. Moreover, the warden of the penitentiary for the District of Columbia reports officially to the secretary of the interior. It would seem advisable that all control over federal prisons and prisoners should be centered in one office with responsibility therefor definitely fixed.

The establishment of this office would make it possible to draw into the movement for penal reform many of the agencies under the control of the Department of the Interior, the Department of Agriculture, the Office of Roads and other departments and divisions thereof carrying on outdoor public work.

The development of penal farm colonies must have the support of the Department of Agriculture; the development of the convict road camp must have the aid of the Office of Public Roads; and, various kinds of outdoor work under the Department of the Interior, the great public works, whether irrigation or highways, must afford opportunity for development in connection with the penal system. Federal aid, restricted we shall hope by all possible safeguards, will find in the newly developing convict system a method of double helpfulness in that the opportunities presented for convict labor will make imperative a more scientific and more definitely organized local state department to handle and be responsible for the development of public works. This is true whether the federal aid be given for highway construction, the preservation of forest reserves or the upbuilding of industrial institutions.

Furthermore, from the national government, city, county or state officials should be able to secure information and recommendations as to the most approved methods of developing a penal system, while from the great training school which the government is conducting, experts should be called upon to aid with their knowledge of scientific engineering.

The Office of Prisons would parallel the Children's Bureau, established in 1911, which is under the Department of the Interior. This bureau investigates and reports upon the welfare of children and child life and especially investigates the questions of infant mortality, the birth rate, physical degeneracy, orphanage, juvenile delinquency, and juvenile courts, desertion and illegitimacy, dangerous occupations, accidents and diseases of children of the working classes, employment, legislation effecting children in the several states and territories, etc.

The Federal Office of Prisons would have similar power as to investigation but would have an even wider field in its control over the United States prisons and prisoners.

## FEDERAL OFFICE OF PRISONS

Mr. George Gordon Battle, chairman of the Committee on Federal Office of Prisons of the National Committee on Prison Labor in an address before a conference of the National Committee on Prison Labor on May 5, 1914, said in part:

"I have been asked to appear here and say something on a subject that is very near my heart, one that is of very great importance, and that is the proposed formation of a department or board in Washington to be known as the Federal Office of Prisons, that is to say, an office, a department or a board, to be inaugurated in one of the great departments of state in Washington—preferably in the Department of the Interior, to be called the Federal Office of Prisons and to have charge of and jurisdiction over the federal prisons. This I consider, most essential and most important.

"In the first place, there is abroad now a very general and most acute interest in all this subject of the treatment of prisoners, and in all matters relating to penology, and as to what we shall do with our criminal class, men and women, who, for the most part, are no more criminal than you and I. Certainly there is such a class, but it is found only occasionally. As a rule, these men and women are neither much better nor worse than the average of humanity.

"For a long time, for many centuries, the principal object of penal law was to punish. It was a savage law, intended to punish, and injure and destroy, and to keep people from committing crime by threatening them. There was no idea of reform; no idea of influence or example in the administration of the penal law up to within a century ago. Oglethorpe was perhaps the first of the great English reformers. You all know who he was—the founder of Georgia. He was one of the earliest pioneers to have any enlightened ideas on the subject of the management of prisons—but the leaven he applied worked very slowly and there was very little change in prison administration until about twenty-five years ago. Our prisons have been, and some of them still are, unspeakable sinks of iniquity and cruelty. Men are made worse by them. They manufacture criminals. If a man or woman is put into one of them in a state of innocence—they come out stained; they are failures. It is manifested that as soon as an intelligent public opinion is focused on such conditions the public will, as soon as they appreciate the condition, demand a change. This awakening is apparent all over the country. The present treatment of criminals is not only wicked but inadequate. There are very many plans and schemes on foot (many of them already progressed to a considerable extent and many more on the threshold of accomplishment) by which it is hoped to treat a convicted man as a human being, not as a beast to be caged in a house of stone and permitted to contract diseases of every kind, but to treat him as a human being, with the rights of a human being, with still a soul and mind and body worthy of human treatment. In order to carry out that plan and idea in connection with federal prisons, the National Committee on Prison Labor has come to the conclusion that the best manner to go about is to create a Federal Office of Prisons. As the law now stands the federal prisons in which men and women are confined for violating the Federal laws are governed and administered under the legislative power of laws passed at different times, with the result that there is no system. They are, for the most part, under the care and jurisdiction of the Department of Justice, with the attorney-general as the head, though in some instances they come under the jurisdiction of the Department of the Interior. Until about 1891, the federal prisoners were largely con-

## FEDERAL OFFICE OF PRISONS

fined in local state prisons—for instance, we had in New York, previous to 1891, federal prisoners confined in our state prison. At that time a law was passed creating three distinct federal prisons. These are still in existence. One of them is at Atlanta, Ga., where prisoners from this district and the east, generally, are sent. The second prison is at Fort Leavenworth, Kansas, and the third at Walla Walla, Washington, so that these three prisons, as you will see, extend territorially as it were all over the country. There is no general or intelligent system of laws by which these prisons are managed. They are under the general care and supervision of the attorney-general and his staff, but only in an incidental way. The Department of Justice is very much overworked at the present time. Under our present system, by which the attorney-general is the head of the law department, with the duty of managing and controlling our great corporations, you can well imagine that his time is very much occupied and to such an extent that he cannot attend to the proper management of the federal prisons and so this management is given over to the hands of subordinates. It is proposed, if it can be accomplished, to have enacted at the next session of legislature a law to change this condition; to establish a federal office or bureau of prisons, not in the Department of Justice, but in the Department of the Interior. This should provide for the management of these prisons along liberal, progressive, enlightened and humane lines; provide for a proper parole system; for a farm system instead of the system which has existed of locking men up in living tombs for years; to give the prisoners light and air. It is hoped, by these laws, to provide for a humane system of parole by which men will receive as a reward for good conduct a shortening of their terms of imprisonment; also to provide for the farm system, to get the men out into the open air on state farms; to provide for laws in short which will carry out, as far as possible, the modern ideas as to the treatment of criminals. We all know that the most difficult thing in the world to reform is an institution without any head, and that is the difficulty with the federal prisons now. They are managed as an incident to the Department of Justice. As a result, the responsibility is scattered amongst subordinates. If the Federal Office of Prisons is established with a responsible officer at the head, we will be able to introduce into the federal prisons of this country these modern ideas which the people of the country are determined to see as soon as possible introduced into all the prisons of the country. There is another reason why this is important at the present time, and that is the tremendous extension in the scope of the federal laws. Up to a few years ago there were comparatively but few statutes under which men were convicted by federal prosecution. Here and there a petty official in the postal department was convicted for stealing stamps; then there were the pension frauds, and a few other offenses, but with the advance of the modern theory of general governmental supervision all this has been greatly extended. We have the Pure Food Law, a wise and good law, under which there have been many prosecutions and convictions—and I hope there will be more of such convictions. This is a law that should be enforced, and there are many other federal penal laws. The result is that there is a vastly greater number of federal prisoners and therefore it is important that these prisoners should be humanely and intelligently dealt with, and the best way to accomplish that is by the establishment of this Federal Office of Prisons in Washington and by one comprehensive system of law put the whole body of administration of the federal prisons on an intelligent and humane basis. I

## PRISON REFORM URGED IN NEW YORK.

know of nothing that is more important than this. Mr. Osborne by his, I might almost say sublime experiment, has focused the attention of the whole country on this subject—people all over the country are awakening to interest in it and there is no branch of the subject more important than the administration of the federal prisons, for there is no abuse more easily remedied. It is all under one Congress. If we effect legislation at Washington creating and instituting this Federal Office of Prisons we shall have taken a very long step toward the era of humane and Christian treatment of criminals."

J. D. SEARS,

Assistant Secretary of the National Committee on Prison Labor, N. Y. city.

The American Prison Association also has a Committee on Federal Office of Prisons which is charged with the duty to confer with President Wilson on the subject of the establishment of a federal office. The personnel of this committee is as follows: Prof. Charles R. Henderson, University of Chicago, chairman; Frank L. Randall, chairman, Massachusetts Prison Commission; H. Wolfer, warden, State Penitentiary, Stillwater, Minn.; W. H. Moyer, warden, Federal Prison, Atlanta, Ga.; J. P. Byers, secretary, American Prison Association.

R. H. G.

**Drastic Prison Reform Urged in New York.**—A new turn has been given to the movement to abolish Sing Sing Prison, New York's antiquated mausoleum on the Hudson. The State Commission on Prison Reform, of which Thomas Mott Osborne is chairman, has recommended to Governor Glynn that the place be converted into a receiving station for the observation and study of all persons sentenced to a state prison, for the medical examination and treatment of those afflicted with disease and for weeding out those found to be mentally defective.

Among other recommendations in the report of the commission, made public last week, is one that a Court of Rehabilitation be established, and indeterminate sentences given all persons sent to state prisons, in order that the reformation of law-breakers may be determined as accurately as their guilt.

In urging the abolition of Sing Sing, the commission calls attention to the "incredible fact" that public opinion has for over half a century been aware of the barbarity of confining human beings in the cells there and yet has let the institution remain—"a disgrace to a civilized community." The commission calls strongly for the erection of a new prison to take the place of Sing Sing. The new prison, it declares, should have a site of 2,000 acres, consisting of forest and arable lands, and should not be more than 100 miles from New York city.

With reference to converting Sing Sing into a receiving station the commission says it contemplates the establishment of a hospital and neurological institute as well as a place of detention and observation. This will require, it points out, the services of a staff of genuine experts, physicians and officials of special training, broad sympathies and knowledge of human nature. The cell block will not be needed for this purpose and should be abandoned.

In urging sentences without maximum or minimum limit for all persons sentenced to state prisons, the commission declares that "the unequal sentences imposed by different judges for the same offense, or even by the same judge at different times, is little short of scandal in the administration of our criminal justice, and creates in those discriminated against a ranking sense of the injustice and inequality of the law."

## PENAL FARM SITE CHOSEN

The idea of a court of rehabilitation to determine when prisoners are fit to be returned to society was first given prominence some years ago by Roland B. Molineaux, and has since been strongly urged in Texas. Such a court, as usually conceived, will be a court of record to try a person for release on the evidence of his conduct in prison. If he has been given an indeterminate sentence, as the commission urges, the court can diminish or prolong his term as it sees fit.

The commission declares: "While perfect justice cannot be expected from any human instrumentality, it is conceived that a single court, acting for the entire state, and sitting as a Board of Parole or Court of Rehabilitation will be much more apt to administer an equal justice than is possible under the present system. Under such a system it will be the prisoner and not the crime that will be tried.

Pending the creation of such a court, the commission recommends the establishment of local advisory boards, of three or five members each, for each prison and reformatory, for the purpose of investigating all applications for pardon or parole.

Believing that the greatest obstacle in the way of real prison reform in the state is the confusion and demoralization in the prison administration, the commission urges as the necessary ground work of all other changes the consolidation of all offices, boards and commissions into a permanent state department of correction. In this it recommends the vesting of the entire penal administration of the state.

Among its other recommendations are a separate institution for the care of all adult mental defectives convicted of crime; the "honest, efficient and business-like administration" of all systems of prison labor in the state; the creation of an employment bureau for paroled and discharged prisoners in the office of the superintendent of prisons; and the establishment of a thorough system of education in the penal institutions under the state commissioner of education.—From *The Survey*, May 23, 1914.

R. H. G.

**Penal Farm Site Chosen by Indiana Commission.**—The commission, appointed by Governor Ralston to select a site for the state's penal farm for short term prisoners, under an act of the 1913 legislature, has decided to buy the site near Putnamville, Ind., containing 1,567 acres. The total price to be paid for the tract by the state, including rights of way to the Monon and the Vandalia railroads, is \$57,000. The legislature appropriated \$60,000 to buy a tract of not less than five hundred acres.

The commission, as soon as it had decided on the site, made a formal report to the governor, setting out the advantages of the site offered and telling why it had selected it over a dozen others that had been in turn selected from fifty sites offered the commission throughout the state.

In the report the relative values of each tract of land in the thirteen sites finally considered were set out in terms of a scale of requirements, arbitrarily placed by the commission members. The Putnamville site scaled high in such points as stone, for building material and for road and agricultural material, water facilities, drainage and sewage disposal, railroad facilities, stock and fruit raising possibilities and agricultural facilities.



## PENAL FARM SITE CHOSEN

The report of the commission to the governor follows, in part:

"In the consideration of the advantages and resources of the site stipulated by the organic act, the commission was early convinced of the difficulty, if not the impossibility, of locating any one square mile of land within the state which would embody all the requirements. While the language of the law, requiring that all or as many as practicable of the enumerated advantages and resources should be given consideration, was liberal enough, the commission, appreciating the objects and purposes of the new institution and the admitted fact that it is in a degree experimental, has kept in mind the determination to secure for it every advantage possible which makes for its success.

"In order that the necessities and facilities might be better measured and understood, the commission by committees visited the two similar institutions at Guelph, Ontario, and Occaquan, Va., and from each much valuable information was gathered which has assisted in the effort to solve the complex problem submitted to us. While the conditions at each of these institutions are unlike in many particulars and are also dissimilar to those existing in Indiana, yet the organic act of our proposed institution contemplates an establishment on the same general lines.

"To the commission the law seems clear and requires little interpretation. Unmistakably it outlines a reformatory institution which should be a beehive of well regulated and varied industries, which is expected to be uplifting and health-giving by reason of their industrial activities in the open air, and which when fully developed should be largely if not wholly self-supporting. It stipulates a site with a minimum of five hundred acres suitable for varied forms of husbandry, fruit growing and stock raising, brick making and the preparation of road and paving material with good railroad, drainage, sewerage and water facilities.

"It is the consensus of opinion that the institution should provide as soon as practicable for a population of five hundred prisoners and ultimately eight hundred or nine hundred. Having in view such a population and a necessity of finding employment for it, the commission reached the conclusion that the site selected must supply abundant raw material for industries requiring mainly unskilled labor, as only short term prisoners will be admitted.

"The land for farming and gardening purposes, although poor and neglected, may be developed and made to yield sufficient products for the maintenance of the population, but the income for improvements, new construction and the like must be derived from the sale of the industrial products. The farm and garden land could at best employ only a limited number of the prisoners and the majority must, therefore, find work in the industries. With this idea raw materials in proper quality and quantity become paramount in the selection of a site.

"The industries other than agricultural suggested by the statute are brickmaking and the preparation of road and paving material, and the required raw materials are clay, shales and stone, and, unfortunately, the best grades of each are not found in the same locality. The report of the geological surveys of Indiana, made by the state and general government experts, show beyond question that the Mitchell limestone produces the best road materials, and that this limestone is not found anywhere in the state in proximity to the knobstone or coal-bearing shales, which furnish the best shales for brickmaking. The commission has, in consequence, found itself confronted with the question of determining whether the proposed industries shall be limited to shale or stone products.

"Its investigations lead to a unanimous judgment in favor of the stone industries for the reason that stone supplies a larger number of industries, including lime burning, ground limestone for land treatment, crushed stone for road materials and stone for building purposes, and, therefore, affords employment for a larger number of men. The clays found covering the Mitchell limestone make a high grade soft

## INTERNATIONAL PRISON CONGRESS

brick for which there is a limited demand. The shales for brickmaking, especially for paving blocks, are much desired and the demand is seemingly a growing one, but the industry could never be developed sufficiently to employ more than a relatively small proportion of the population of the proposed institution. Moreover, the commission became convinced from its own observation and from the advice of experts that the shale deposits vary in quantity and quality to such a degree that it would be imprudent, if not hazardous, to locate such a large institution on any of the sites offered with the expectation of securing its chief income from shale industries.

"The commission's conclusion in favor of the Mitchell stone-bearing land was reached only after a careful inspection of the best sites offered and a consideration of expert opinion upon the subject of paving and road making materials. \* \* \*

"By the agreement, possession of these lands will be given to the state August 1, of the current year, with the exception of land, which may be in corn, which the owner will have the right to gather. The state, however, reserves the right to enter upon the lands and make such improvements as it may desire.

"The commission will proceed with the duty of transferring these lands to the state and with the payments therefor as authorized by the law and having completed the transaction it will submit an additional report."—From the *Indianapolis News*, Apr. 29, 1914. R. H. G.

**Questions Admitted to the Programs of the IXth International Prison Congress, London, 1915, (July 26th).**—Section I.—*Criminal Law.*—*First Question.*—Is it proper to leave to the authority which is charged with the duty of prosecution to decide as to its advisability?

If this is granted, ought such authority to be restricted within certain limits and subjected to control?

In this connection, is it proper to give to the judge the right not to pronounce sentence of guilty, even if the fact is substantially established?

*Second Question.*—Is recidivism in petty criminality sufficiently repressed by measures contained in present laws?

Would it be possible, and, if so, within what limits, to apply the principle of the indeterminate sentence?

*Third Question.*—Is it desirable to abolish or even to restrict, and in the latter case within what limits, the penalty of deprivation of civil rights?

*Fourth Question.*—Should measures be taken to facilitate and render more efficacious the communications between the various services of identification, especially by unifying:

- (a) The finger print cards, in relation to forms and order of taking impressions?
- (b) The anthropometric cards, in relation to forms, texts and abbreviations?
- (c) The formulas designed to furnish the police of another country information about the persons to be identified?

Should not every police administration take the initiative in informing the administration of the country when an individual has committed or is suspected of intending to commit crimes?

**Section II.—*Penal Institutions.***—*First Question.*—If the system of *supplementary detention* is accepted as a means of repression in respect to recidivists, who have committed a grave offense, how ought this detention to be organized?

## ASSOCIATION OF CHIEFS OF POLICE

*Second Question.*—Is it desirable to establish laboratories in correctional institutions for the scientific study of prisoners?

What results may be expected from this measure in the discovery of causes of criminality and in the individual treatment of delinquents?

*Third Question.*—Admitting the necessity, as recognized by the Prison Congress at Budapest, of creating establishments of detention specially set apart for delinquents of limited responsibility, what should be the organization of these establishments in respect to construction, methods, administration, etc.?

*Fourth Question.*—Ought not conditional liberation as well as conditional conviction be combined with a system of friendly supervision ("patronage") and control during the period of probation?

Taking into account the experience of the last ten years, how may these two services best be organized?

Would it be wise to extend the application of these two principles? If so, in what measure and in what direction?

Section III.—*Preventive Methods.*—*First Question.*—What influence should be attributed to pictures and publicity in augmenting criminality; and how, therefore, should we organize the campaign against this influence, particularly in regard to pornographic and criminal publications?

*Second Question.*—What has been the result of experiments made in those countries where women have been employed in police service?

Is it desirable to make this system general? If so, on what principles?

*Third Question.*—In what way can the combat against vagabonds and so-called international delinquents best be waged?

*Fourth Question.*—Can the restoration of released prisoners be promoted by the method of rehabilitation?

In what manner should this method be employed to produce the most useful results?

Section IV.—*Children and Minors.*—*First Question.*—In what cases and according to what rules may children neglected by their parents or under correctional treatment be placed out in selected families?

*Second Question.*—Should one create special establishments for abnormal children (retarded, feeble-minded) who manifest dangerous moral tendencies, and, not limiting the treatment to primary instruction, take measures to assure their welfare in adolescence and adult life?

*Third Question.*—Should fines be imposed on minor delinquents?

In what cases and under what conditions?

What steps should be taken in case of non-payment of fines?

*Fourth Question.*—What are the best means of protecting children whose occupations or parents place them in moral danger?

*Subjects for Investigation.*—I. The organization of juvenile courts, as they exist in various countries, and the results of experience up to date.

II. The guarantees against the abuse of preventive detention in the laws

III. The results of special establishments for tuberculous prisoners.  
of various countries.

C. R. H.

## POLICE.

**Convention of the International Association of Chiefs of Police.**—The annual convention of the International Association of Chiefs of Police was

## CONDEMN RIDICULING POLICE

held in the city of Grand Rapids, Michigan, beginning June 16th, and continuing for one week.

The association, which started as the "Police Union" and continued as such until the year 1902, attained its twenty-first birthday when it convened in the Michigan city. With an original membership of fifty persons the organization has prospered and performed a commendable work. Its rolls now include a membership of nearly four hundred chiefs of police, among them representatives from Canada, Austria, Guatamalia, Panama, Havana, Japan and elsewhere, while its contributors to discussions hail from all parts of the world.

The next place of meeting is the home town of the secretary-treasurer of the asociation, Harvey O. Carr, who, together with the police commisioners, is making arrangements for an entertainment of "big city" proportions, although the cry of the president is "less frolic and more work."

On three different occasions the association has been received by its president in Washington, D. C., and among those who honored the gathering there last season with their presence, were, the dintinguished speaker of the House of Representatives, Hon. Champ Clark, Hon. William Borland, of Missouri, Hon. Julius Kahn, of California, Hon. John Barrett, Chief of the Bureau of American Republics, and many other men of note, prominent in public affairs.

An effort is being made by the police directing heads of San Francisco, of which Superintendent White is principal, to secure the meeting of the International Association of Police Chiefs for that city for the year 1915, during the Exposition period. Not only is that energetic agency after the police meeting, but it is now engaged in soliciting anything and everything by way of criminal photographs, measurements and other descriptions as well as informations that may be procured concerning the questionable craft, that may aid the San Francisco department in maintaining a clean slate during the Exposition season.

In this connection the announcement comes that the Pinkertons will have full supervision of the Panama Exposition Buildings and Grounds.

The Bureau of Education and Economics of the Panama Exposition is urging a police exhibit for that event such as was placed in successful effect by President Sylvester of the International Association at the St. Louis Exposition, and which did much to raise the police organizations throughout the country in the esteem of the good citizens and students of civic matters.

R. S.

### Condemn the Ridiculing of Police on the Stage and in Moving Pictures.

—The ridiculing of the policeman on the stage and in moving pictures deserves to be condemned by all good citizens, as it has already been denounced by police organizations throughout the country. It is with poor grace that the theatrical manipulator places the individual up for ridicule who may within ten minutes be called upon to save the life or property of that same theater manager or his family. To depreciate thus the insignia of peace and order, to hold up to derision the means provided by law to secure the public in life and property, should be made an offense under the law.

The little child, the growing youth, the bully of the street are by such presentations taught to disclaim and disrespect the representative of the law.

The Washington, D. C., authorities recently requested the withdrawal of

## PENITENTIARY STATISTICS FROM FRANCE

films in moving picture shows wherein the police were held up to criticism and humor, including the "The Third Degree," and all managements agreed to do so. This is a movement worthy of emulation.

R. S.

### STATISTICS.

#### Operation of the Indeterminate Sentence and Parole Law in Indiana.—

On April 1, 1914, the Indeterminate Sentence and Parole law had been in effect in Indiana for seventeen years. A careful record has been kept of the operations of the law and the history is indeed an interesting one.

The State Prison Board has paroled 3,088 men, the Reformatory 4,896, the Woman's Prison 237, a total of 8,221. All of these persons left the institution under the rules and regulations of the respective parole boards, and were thereafter under the supervision of the visiting agents of the institutions. Twenty-six out of every one hundred (2,145 in all) violated their parole. The percentage of parole violators is practically the same in the three institutions: 26.4 per cent at the State Prison, 25.9 per cent at the Reformatory, 26 per cent at the Woman's Prison. Of the 2,145 parole violators the institutions succeeded in apprehending 1,250. The remaining 895 are at large.

Of the total number paroled, 4,788 served their parole period and were released from supervision; the sentence of 455 expired during the parole period and they were automatically discharged; 142 died; 691 remained under supervision April 1, 1914.

These men and women while on parole reported regularly to the institution authorities. Their reports indicate earnings amounting to \$2,284,577.85, expenses \$1,878,406.71. This means that these persons not only earned their own living while on parole but had savings amounting to \$406,171.14, an average of nearly \$50.00 each.

Operations of the Indeterminate Sentence and Parole Laws, April 1, 1897 to April 1, 1914:

	State Prison	Reformatory	Woman's Prison	Total
Served parole and given final discharge . . . . .	1,809	2,867	112	4,788
Sentence expired . . . . .	135	296	24	455
Returned for violation of parole . . . . .	558	656	36	1,250
Delinquent and at large . . . . .	257	612	26	895
Died . . . . .	55	79	8	142
Reporting April 1, 1914 . . . . .	274	386	31	691
Total paroled . . . . .	3,088	4,896	237	8,221
Percentage of unsatisfactory cases . . . . .	26.39	25.89	26.16	26.09
Earnings . . . . .	\$875,422.05	\$1,406,602.44	\$2,553.36	\$2,284,577.85
Expenses . . . . .	674,493.73	1,202,632.14	1,280.84	1,878,406.71
Savings . . . . .	200,928.32	203,970.30	1,272.52	406,171.14

A. W. BUTLER,

State Board of Charities, Indianapolis, Ind.

**Penitentiary Statistics from France.**—The report on Penitentiary Statistics from France for the year 1912<sup>1</sup> shows the statistics of transfers, central

<sup>1</sup>Statistique Pénitentiaire pour l'année 1912. Ministère de la Justice, Paris, 1914, par M. C. Just, Directeur de l'administration pénitentiaire.

## PENITENTIARY STATISTICS FROM FRANCE

prisons, establishment of correctional education, prisons for short sentences, convicts at hard labor. The average population in prisons in 1912 was 29,952; long terms, 6,205 men and 599 women; short terms, 15,669 men and 2,585 women; young prisoners, 3,423 male, 891 female; incarcerated for security, 301 males, 75 females; detention of men at forced labor and to be transported, 204. The total number of days served was 10,964,484. The entire report is full of instructive materials; only a few illustrations can be taken.

Of 6,434 ordinary prisoners on December 31, 1912, the majority had a claim to 4 to 5 tenths of the product of their labor, and 133 to 6 tenths. Only 8.78% were illiterate; only 3.23% had any education beyond the primary grades; 87% had not finished primary instruction. Of the women 39.33 were illiterate.

Only 151 were released on conditions; it is evident that the "indeterminate sentence" and parole system have not yet taken deep root in France.

The 43,663 violations of rules were punished by cell, hall of discipline, dry bread, other reductions of diet or of payments, fines, reprimands and other punishments; The measure most used (9,583 times) was dry bread, and next fines (9,178).

In view of our frequent escapes, in spite of our "bull pen" architecture, whose only excuse is security, read this sentence: "No escape was attempted during the year 1912. The same was true in 1911." Yet French criminals furnish many desperate men. There was not one suicide in 1912.

For each 100 days of incarceration the prisoners were kept at work on the average of 69.6 days. Interesting is the statement relating to the principal industries: brushmaking employed 177 prisoners to 15,300 free workmen; shoe-making 327 to 208,000; cabinetmaking 59 to 243,000; printing 178 to 86,000. Of the product of industry 4.96% went as gratuities to prisoners, and 95.04% to the state; the net value of the product per day was 1.31 francs (about 26 cents). Since 1906 contract labor has been abolished in the central institutions and the state directs all the prison industries; but this is not true of all local prisons.

There were 3,423 boys and 891 girls committed by courts to reform schools, public and private.

In the tables (pp. 109-275) the facts are analyzed very minutely by institutions. We should like to see tables for the principal facts which would cover more than two years in order to note tendencies.

C. R. H.

## REVIEWS AND CRITICISMS.

GESCHICHTE DER DEUTSCHEN RECHTSWISSENSCHAFT. *Ernst Landsberg.*  
Division III, Part II. Text, 1008 pp. Notes, 414 pp. Munich  
and Berlin, 1910.

This is the last installment of the monumental work on the History of German Legal Science published under the direction of the Historical Commission of the Royal Academy of Science of Bavaria. The first and second divisions of the work (1070 pp.), which were prepared by Roderich v. Stintzing, professor of law at the University of Bonn, and appeared in 1880 and 1884 respectively, brought down the history to the second half of the 17th century. After Professor Stintzing's death, his pupil and friend, Dr. Landsberg, was asked to continue the work. Part I of the third division of the history (878 pp.), covering the period of the 18th century Law-of-Nature School, was published in 1898. The present volumes, with which the work concludes, trace the history of German legal science from the beginning of the 19th century to the time of the Empire and the preparation of the modern codes, that is, to about the year 1870.

Breaking off the history at the point mentioned, the author has as the central theme of this portion of his work the rise and decline of the Historical School. By way of introduction, so to speak, the author details in two chapters the status of private and public law in Germany at the beginning of the 19th century. In the first chapter (Ch. 13) Hugo and Thibaut appear as the leading figures. Through works of a profound, independent and methodological character, Hugo opened up for German jurisprudence the deep fountain of Kantian thought. "For this reason he occupies in the history of positive jurisprudence the place which belongs to Kant in the history of all sciences." (P. 48.) With Hugo, therefore, began the modern era in German jurisprudence.

In Thibaut we meet the greatest civilist of his day, though he is known more widely today as the opponent of Savigny, by reason of his advocacy of the codification of the law. Opposed to the exaggerated notions both of the 18th century Law-of-Nature School, and those of the Historical School, he became the founder of the School of Scientific Positivism, which retained a strong following throughout the period under review.

In the second chapter (Chapter 14) the author discusses the writers on public law—criminal law (Feuerbach, Grolman), procedure (Gönner, Martin), constitutional, international and feudal law (Klüber, Pätz), and canon law. Feuerbach freed criminal law from the fetters of the Law-of-Nature School and arbitrariness. In "Revision der Grundsätze und Grundbegriffe des positiven peinlichen Rechts (2 vols., 1799, 1800)" he applied the psychology and ethics of Kant to criminal law. Through this important work and numerous other writings he created modern criminal law.

Chapter 15 is devoted to the founding of the Historical School by Savigny, to a discussion of its program and its superiority over the

## REVIEWS AND CRITICISMS

**Law-of-Nature School.** Revolutionary in the history of German legal science were Savigny's Law of Possession (1803), his History of Roman Law in the Middle Ages and his System of Roman Law. Eichhorn was the co-founder with Savigny of the Historical School. His investigations were in the field of old German law, a branch of law which through him became an independent juristic discipline.

Part I of the following chapter shows us the earlier fruits of the Historical School in the field of Roman law, old German law, and feudal, canon and criminal law. The rest of the chapter is devoted to a discussion of tendencies in legal science opposed to the Historical School. Hegel is presented as the only intellectual power in Germany at the beginning of the 19th century able to cope with romanticism, Savigny, and the Historical School. After outlining Hegel's philosophy of law and history, the author gives an account of the work of two leading jurists belonging to the Hegelian school—Gans and Stahl. The narrative then takes us to the representatives of the Positivist School (Mühlenbruch, Linde, Bayer and Wächter). In Wächter we find "one of the greatest German jurists of all times." He had become "almost in his lifetime a legendary person of such authority and popularity that Windscheid could say in 1879: 'If he were not an old man, he would have been the only person whom people would have trusted—whom they would have liked to appoint as dictator *legibus scribundis*—as the sole drafter of a German civil code.'" (P. 387.) Wächter was throughout his long career as a jurist a scientific positivist in the truest sense. He embodied in his person the virtues of the Historical School, and yet he maintained his independence with respect to that school by his emphasis on the practical and positive, by his appreciation of the necessity of legislation and of legislative problems, and by his aversion to romantic exaggeration. Scientific positivism found pure expression also in Wächter's works on criminal law, a branch of the law which was soon to pass under the sway of Hegelianism. The chapter concludes with Mittermaier, whose reputation in his lifetime both in Germany and abroad was scarcely less than that of Savigny. The author admits that such an estimate of Mittermaier contains a gross exaggeration; but he defends him against the unjust criticism to which by way of reaction his life work has since been subjected. According to our author Mittermaier's main contribution to the law is to be found not in his literary productions, but in his influence upon legislation and the practice.

In Chap. 17 we reach the height of success of the Historical School. We see also that through the powerful personality of Puchta a new direction was given to the Historical School as founded by Savigny, and limitations were placed upon it, which, while they carried the School to the height of its fame, were calculated inevitably to produce a reaction. "A school which accepted his (Puchta's) principles had really no right to call itself a Historical School—so strongly predominated with Puchta the formal-imperative, the dialectic-reasonable element." (P. 459.) Notwithstanding this, Puchta was readily accepted as the second head of the Historical School. With Puchta the cult of an idealistic jurisprudence gained predominance. In the second



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part of Chapter 17 the lives and writings of other Romanists, chief among whom are Rudorff, Keller and v. Bethmann-Hollweg, are discussed. In Part III follows an account of the split in the Historical School—between the Romanists and the Germanists. It was inevitable that the jurists devoted to the study of Germanic law incited by a spirit of nationalism, should in time become the bitter opponents of the champions of a foreign system. The leader in the attack was Beseler. Parts IV, V and VI deal respectively with other Germanists (Bluntchli, etc.), with writers on civil procedure (J. W. Planck, etc.), and with writers on canon law (Richter, Friedberg, Hinschius, etc.).

In Chap. 18 the history of the Historical School is interrupted so that the influence of Hegelianism and of positivism during the period just traversed may be shown. In tracing the influence of Hegelianism upon juristic thought, the author discovers the curious fact that in private law it led to a strict doctrine of positivism, while it invited philosophic speculation in criminal law. The positivist writers on German common law are classified into those representing speculative positivism (Christiansen, Kierulff), into those whose positivism is based upon the decisions of the courts (Seuffert, Sintenis), and into those whose positivism is based upon the *Corpus Juris Civilis* (Vangerow). Next are considered the writers on territorial law, including Wächter, the writers on the law of bills of exchange and commercial law (Einert, Liebe, Thöl, Biener), Otto Bähr, writers on public law and philosophy of law, (Pütter, Heffter, Ahrens, Zachariae), and the writers on criminal law under the influence of Hegel (Abegg, Köstlin, Berner, Hälschner, Geyer, John, Merkel, v. Holtzendorff). The chapter concludes with the last Hegelians, Lorenz v. Stein and Ferdinand Lassalle.

The next chapter (Chapter 19) is entitled "The Crisis of the Historical School." Toward the middle of the 19th century the Historical School as such came to an end. Its aim had been to build up an idealistic jurisprudence. The Romanists had sought to rear it on the basis of classical Roman law; the Germanists on the basis of old German law—without reference to the practical requirements of their time. A reaction set in with v. Ihering, the powerful advocate of a practical jurisprudence. Contrary to the individualistic view point, then prevailing, of the Hegelian School, Ihering insisted upon the fundamental doctrine that law exists for the protection of *social* interests. Associated with Ihering in the movement was the Germanist Gerber. Bruns, Delbrück and Arnold occupy a position half-way between Ihering and Gerber, on the one hand, and the old school of jurists, on the other hand.

In the last chapter the author considers the work of the jurists whose main activity falls between the years 1850 and 1870. The Historical School as such was dead, but the historical method developed by it was to remain its priceless contribution to jurisprudence. It found recognition in all branches of the law, even in those where it had not met with favor before. Through the labors of Zachariae v. Lingenthal, Leist, v. Ihering, Ficker, Maurer, Brunner and Sohm, the historical study was extended beyond that of Roman and German law to Aryan law, Graeco-Italian law, Frankish-Norman law, and Scan-

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dinavian and English law. The principal other jurists considered in the chapter are Kuntze, Brinz, Bekker, Windscheid (common law), Mommsen (history of Roman law), Paul Roth, Ficker, Stobbe, Gierke (German law), Unger, Dernburg (territorial law), Goldschmidt, Endemann (commercial law), Bülow (civil procedure), Glaser (criminal law and procedure), Gneist (administrative law), Schulze, Laband, G. Meyer (constitutional law), v. Bulmerincq (international law).

The preceding outline includes only the names of the more prominent jurists discussed. The aim throughout the work has been to give a comprehensive account of German legal science at the different periods of its development, and this aim has been faithfully pursued in the last part of the work, notwithstanding the vastness of the material to be digested. Biographical statements and a description of their principal works may be found concerning most of the writers mentioned, either in the text or in the elaborate notes. With regard to the leading jurists the author takes special pains to trace the influence of the home and of the university so that the philosophic attitude of the writer may be more readily comprehended; and in the discussion of the works of a particular writer there is depicted the history of his growth and development to the maturity of his powers. On every hand our author points out the relation of the different works of the same jurist to each other, and their relation to and influence upon juristic science in Germany.

The work on the History of German Jurisprudence by Stintzing and Landsberg is truly a monumental work, the like of which does not exist in any other country. No one unacquainted with the boundless mass of juristic literature covered by the volumes under consideration can form a mental picture of the enormous amount of labor that our author has had to perform. All interested in German jurisprudence owe a debt of gratitude to Dr. Landsberg for having undertaken and so well performed such an arduous task.

E. G. LORENZEN.

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FESTBAND ANLASSLICH DES 25 JAHRIGEN BESTEHENS DER INTERNATIONALEN KRIMINALISTISCHEN VEREINIGUNG. Bulletin der Internationalen Kriminalistischen Vereinigung, Bd. XXI, Heft I, edited by Dr. Ernst Rosenfeld, Berlin, 1914. Pp. 443.

It is extremely difficult to give in brief a concept of the multifarious themes developed in this memorial collection. A common thread, however, runs through the whole volume; that thread is the inspiration which the I. K. V. has communicated to its members in many countries. The book is a collection of papers commemorative of the 25th anniversary of the Union. Thirty notable men have collaborated in it. Appropriately enough the opening paper is a brief history of the founding of the Union by Professor von Liszt, to whom with Van Hamel, of Amsterdam, and Prins, of Brussels, credit is due for the original conception of the Union. The I. K. V. grew, von Liszt says, from his editorial contacts with contributors to the *Zeitschrift für die gesamte Strafrechtswissenschaft*, which he and Dochow founded in 1881. In 1888 he, van Hamel and Prins drew up the statement of

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principles which for ten years was to serve as the Union's program. The first article of this platform frankly declared that crime and punishment must be considered no less from the sociological than from the juridical standpoint. The third called for preventive measures as well as punishment. The fourth demanded classification of criminals, particularly distinction between occasional and habitual criminals. Other practical issues were named, notably improvement of prisons and long terms for incorrigibles. The general object of the I. K. V. was declared shortly after by von Liszt to be the gradual reform of existing law to the intent that the function of punishment might be better formulated. On January 1, 1889, the I. K. V. came formally into existence. Its first general meeting was held in Brussels, August 7, of that year. In spite of some rebuffs the Union prospered and soon included in its membership a large number of the most important criminalists of Europe, and a few from America. The formation of national branches followed.

Professor Cuhe in his paper declares that the I. K. V. by abrogating in 1897, the dogmatic Article II of its original statement of principles left itself, to say the least, in an equivocal position. Its very liberalism and freedom from dogma leaves the impression that it has no longer any precise aim. This is specially true of the national branches. For example, the French branch, he says, differs in no respect from such an organization as the Société des Prisons. As a remedy for this latitudinarianism he urges the Union to stand, say, for the principle that individualization of punishment is not primarily for the benefit of the individual criminal but for the "security and moral relief of the collectivity."

Professor von Jagemann of Heidelberg urges the claims of protection of childhood as the most effective protective measure against crime. Regierungsrat Lindenau in a brief but suggestive paper asks for more attention to the preventive aspects of the police service and concludes that the special training of higher police officials will secure this desirable end. Dr. Schneickert, writing on the control of international crime, reasserts the resolutions adopted by the I. K. V. at its Hamburg meeting in 1905, which called for the creation, in every modern state, of a special bureau for the repression of international crime. These bureaux are to be in constant and direct communication, and their data are to be worked up scientifically for the common benefit of international relations.

Professor Mayer of Strassburg contributes a lecture on the proper attitude of legislation in regard to "resistance to public authorities." It is liberal in tone and calls for reason and discretion in judges in dealing with such cases. Professor Torp pays a tribute to the I. K. V. for its influence in reforming Danish criminal law, particularly in the repeal of the law permitting corporal punishment, in new legislation for conditional sentences, treatment of tramps and beggars, and in the tendency to eliminate short sentences and to provide more rationally for juvenile delinquents. Professor Stjernberg sends a similar testimonial from Sweden. Direktor Schwander of the Ludwigsburg House of Correction describes the steady development of the idea of special

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institutions for those feeble minded and insane now held in penal institutions. He finds the best solution of the problem of the defective-delinquent in the Wurtemberg plan of committing them to "annexes to penal institutions." Dr. Paul Köhne outlines the contributions of the I. K. V. to the reform of procedure in juvenile cases; and advocates the principles, familiar to Americans, of judicial discretion, special children's courts, probation, and unification of all agencies for child welfare and protection.

Professor Henderson is represented by a paper on "Penology in the United States." He presents the leading ideas in the current movement for the reform of criminal procedure, and summarizes new developments in methods of studying crime, probation and parole. Courts of Morals and Mr. Randall's plan for a Central Board to determine methods of treating offenders committed to it also come in for considerable notice. It is to be regretted that no other American writer has shown sufficient interest to be included in this volume, for not a little of the energy and inspiration of the I. K. V. is traceable to American experiences with probation, parole, and children's courts. Professor Strassmann's paper on *Die Behandlung der Querulanten* (the cranky, litigious, quarrelsome type) suggests the desirability of withdrawing this type from ordinary penal procedure and treating it as insane and irresponsible. With this should be compared Dr. Leppmann's address on *Sexuelle Fragen und Criminalität*, as illustrations of the increasing demand for the interpretation of many types of delinquency in terms of psychology. Dr. Leppmann summarizes recent progress in the domain of sexopathy; he shows, for instance, that many criminals commonly treated as burglars, assaulters, or pickpockets, are really sexopaths, and that for such cases psychological rather than penal treatment should be invoked. He is to be congratulated for his moderate and conservative views, which quite deliver him from the ranks of the sexologists.

Professor Garcon, of Paris, treats briefly of the tendency to take certain classes (juveniles, vagrants, beggars, criminal-insane, drunkards) out of the penal category and to transfer them to that of public charity (*assistance publique*). Professor van Hamel discusses the reaction against rationalism and materialistic science in the Pragmatists, and in Bergson, Bernard Shaw, Chesterton, Maeterlinck, etc.; and shows how this tendency is mirrored in current penal philosophy. The recrudescence of "natural rights" is an illustration in point. He concludes that the modern criminalistic doctrines are based not on pure reason, but on optimism and humanity.

The paper on *Verbrecherkliniken*, by Professor Aschaffenburg, deserves far more extended notice than we can give here. He starts with the broad principle that criminal law is a branch of applied psychology as well as of jurisprudence, goes on to discuss the various meanings of the term, "criminal psychology," and concludes that the only way of fixing its meaning and of making it serviceable in practice is to establish criminological clinics, preferably in connection with universities. Dr. Karl Meyer of the Criminal Law Commission indicates the influence of the I. K. V. on recent German projects for reform of criminal

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law, especially with regard to juveniles, professional criminals and recidivists. Dr. Engelen on the basis of Dutch experience suggests as the proper treatment of beggars and vagabonds (which he makes synonymous) not punishment, but *sichernde Massnahmen*, (measures of prevention and surety), with wide discretion for judges. Professor Silovic's short paper proves that the principle of conditional sentence was well known and used in Croatia even in the 15th century. He has drafted a bill which embodies modern ideas on this important subject, and which seems altogether likely to become law very soon.

The most elaborate paper in the series is Professor Oetker's detailed monograph on abortion. He takes a liberal rather than the traditional legal view of the subject, but bears down very hard upon the professional abortionists in the project of law which he offers. Professor Heimberger points out that one of the chief objects of the I. K. V. has been to educate judges to realize that their function is not purely logical or mathematical, but that they must be concerned equally with measures for executing sentences of punishment, i. e., with prison conditions and administration as well as with criminal codes and procedure. This principle was recognized in the earliest years of the Union and was frequently reaffirmed. The Copenhagen meeting in 1913 passed the following resolution, which is the summary of Heimberger's article: "The Congress observes that considerable progress yet remains to be realized in the professional education of magistrates charged with application of the penal law; it urges that, without neglecting general culture, the importance of which is essential, this education should, in the universities be turned in the direction of those sciences auxiliary to criminal law."

One of the most stimulating papers is Dr. Felisch's story of how modern treatment of juvenile delinquents has been profoundly influenced by the I. K. V. Indeed he calls the meeting of the Union at the prison of Moabit, December 5, 1891, the "birthday of modern reform in the treatment of youthful offenders." He shows how at every successive meeting the subject recurred, and how after 1901 the Juvenile Court became the special object of interest.

Professor Nabokoff pays high tribute to the late Professor Ivan Foinitzky, one of the earliest and most influential members of the I. K. V., and organizer and president for many years of the Russian branch. Dr. Kulischer follows crediting the Russian branch with such reform movements as the parole law of 1909 and the model prisoners' aid statute worked out by the Superior Prison Council in 1908.

Professor van Hamel has the last word; and very fitting, too, since it is an announcement of his retirement from his university chair at seventy, as Dutch law requires. Characteristic is his last sentence, which summarizes his whole teaching, and for that matter restates one of the principles which he helped to draw up twenty-five years ago, and which has been a guiding principle to the I. K. V. ever since: *So rate ich, Abschied nehmend, an erster Stelle zur Ausbildung und Fortbildung der Richter.*

It is, perhaps, ungracious to add a word of criticism, but it seems a pity that so important a book (for it is a book despite the fact that

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it is issued as only a bulletin) should go out unprovided with an adequate index. It is to be hoped that this notable record of substantial achievement will prove an inspiration to the American branch of the I. K. V.

University of Pittsburg.

ARTHUR J. TODD.

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GEFANGNISRECHT UND RECHT DER FURSORGEERZIEHUNG. By Professor Dr. Berthold Freudenthal. Sonderabdruck aus Band V. *Enzyklopädie der Rechtswissenschaft in systematischer Bearbeitung*. Siebente Aufl. 1914.

The central doctrine of this constitution of a German scholar who knows American conditions well, is that the essential regulations of correctional institutions should be contained in the national law. In the German Empire the criminal code is national, while the prison regulations are issued by administrative boards of the several states. Under a constitutional government all that affects the rights of persons and the interests of the people should be under the control of the legislature which represents the people. The danger of imposing unequal penalties on convicts, and of adding to the deprivation of liberty, injury to the body or loss of property, is considerable. Such matters should not be subject to caprice or to administrative arbitrariness. A certain range of discretion in details is admitted to be desirable. The Wisconsin Industrial Commission is working at a similar problem. (See J. R. Commons: "Labor and Administration.")

One could wish that this very competent author had discussed more fully the basis on which the law should rest, whether tradition, or assumed "principles" applied deductively, or induction from experience and results of trial. If the inductive method is to be used, then room must be provided for experimentation. The author gives generous acknowledgment of the improvements introduced in America; but these are largely due to the freedom of individual initiative and variety of experiment in the various states. We must admit that this variety and freedom have produced many undesirable effects, and that our statistical records are too imperfect to be reliable exhibits of actual results; but the advantages are great. Would it not be possible to bring our administration under a "law of correction," while maintaining at least some of the advantages of variety of methods? There should be some safe middle ground between ossification by statute and arbitrary warden-made law which sets the constitution aside for a passing fancy or invention.

Throughout the discussion of systems and methods of various countries are scattered wise suggestions of improvement. The treatment of our reformatories, parole system, "indeterminate sentence" (or "relatively determinate"), and reform schools, is brief but sympathetic and intelligent. The sketch of prison reform contains a remarkable characterization of the historic phases of development in few words. The argument for paying prisoners a gratuity is ingenious and novel. Cellular and community life in prison is treated with discrimination. Alto-

## REVIEWS AND CRITICISMS

gether this short work is one of the most instructive and critical contributions to the subject and deserves translation into English to make it more widely useful.

University of Chicago.

CHARLES R. HENDERSON.

---

**ALCOHOLIC IMBECILITY.** General Presentation as a Foundation for the Practical and Criminal Care of Drunkards. By *Dr. F. Schaefer*, Anstaltsdirektor, Geh. Sanitätsrat.

This little brochure of 60 pages is a very ambitious and specially diffuse German effort to discuss the above question. The author divides the topics into five parts, the first is experimental results; the second, the etymology; the third is the practical; fourth, the new German method of correction, and the fifth, some general conclusions and statistics.

Under these different heads there is a great deal of elaboration and grouping of symptoms and an attempt to merge them into some particular system of movement. The American reader is confused by this effort to divide the symptoms and tabulate them.

The author evidently thinks that a minute analysis of the symptoms, which are so complex, and mixed, one with another, is a contribution to the study. In this there will be some difference of opinion. In the introduction, he recognizes and defends this effort, saying that it is necessary to a proper conception and recognition of the sickness of the drunkard.

The book seems to be intended for laymen and lawyers, and while it may appear very exhaustive in minuteness, is sadly lacking in clearness and directness of statement. Some facts are new to the ordinary readers, thus the cells do not allow certain materials to enter into them, but exercises a selective affinity for certain substances. Alcohol is one of these: it dissolves the fatty-like substitutes called Lippoids which are found between the white of an egg and the fat in the middle. The cell membrane resembles Lippoids and is most quickly disturbed by alcohol.

No other substance poisons the cells so quickly, and the largest quantity is found in the brain. When alcohol enters into the organs, it is in the form of a vapor at a very low temperature and this produces serious derangements. In the chemico-physiological action of alcohol, he mentions that it deprives cells of their acidity and thus lowers their vitality and lessens their power of resistance. Other very interesting facts are mentioned, the significance of which can best be appreciated by the pathologist.

In the methods of correction, questions of responsibility, general control and punishment, are not equal in broad knowledge of the subject to the discussions of the effects of alcohol.

Several different systems of treatment and control are mentioned that are already disregarded and proved to be inefficient.

The author is not happy in his discussion of this part of the subject, nor is he acquainted with the efforts in this country nor in England to any great extent. Taken together this little book is a very useful con-

## REVIEWS AND CRITICISMS

tribution to the subject, but is by no means conclusive, and lacks in that in judicial and scientific accuracy, which is so essential now, in this subject where so much loose thinking and writing occurs.

Hartford, Conn.

T. D. CROTHERS.

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PRISON ASSOCIATION OF NEW YORK. Sixty-Eighth Annual Report and and Review of the Correctional System of New York State, 1912. Prepared by *Dr. O. F. Lewis*, General Secretary. Pp. 278.

The ever widening field of welfare work for prisoners is well illustrated in the Sixty-Eighth Annual Report of the Prison Association of New York. The measure of the mission of that organization is not marked merely the practical aid given to some hundreds of paroled offenders and probationers, important though it be. This is indicated by the fact that while seventy-five pages are given to describing this direct work, over two hundred pages are devoted to a discriminating description of the penal and reformatory system of New York state. The pen picture of the different departments of work carried on by the association, is both enlightening and appealing. The organization of the work into bureaus; one for the care of state paroled men, another for local probation service, and one for the relief of prisoner's families, in addition to the activities of the administrative department, shows the work of an able and orderly executive. The traditions for statesmanlike reform established in the organization of this society by Dr. E. C. Wines, and continued by Dr. S. J. Barrows, have been sustained and extended by the broad scholarship and energetic leadership of Dr. O. F. Lewis, the present general secretary.

That Dr. Lewis conceives the functions of the society to extend far beyond the rescue and relief of individuals, is illustrated by the comprehensive and adequate portrayal of conditions in the present correctional system in New York state. Both the good and the evil features are described with impartial fairness, and it is evident the writer has seen what he describes and knows what he is talking about. In addition to many comparative tables and views of institutions, the portrayal itself is so well classified that the report is sure to be read and utilized for purposes of comparison in other states. We find an illuminating statement of the scope of the problem; a statement of the different theories of punishment; a classification of the different offenders and of the institutions established for their punishment or treatment. The report shows that although the penal system of New York state is centralized and highly organized, it has nevertheless not succeeded in eliminating some of the greatest handicaps to penal reform. Its correctional system, for instance, has not become innocent of politics. While it has abolished prison labor, its long established state industries have not become self-supporting. It has at Elmira the first reformatory ever known, and with far-seeing vision, the state is practicing the best approved methods in dealing with women prisoners at Bedford; in demonstrating the feasibility of the honor system at Great Meadow prison, and in the establishment of a farm colony for inebriates and vagrants. On the contrary, and



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in the meantime, many of the old badges of barbarism still continue in many of the prisons of this, as of other states. The cropped head, the rule of silence, the poor food, unwholesome cells, brutality of under officials, and other features which impressed Thomas Mott Osborne, as so unnecessary in his experience, are set forth with force in this report. The general idleness in the county penitentiaries, the indefensible conditions in the average county jail, and the disgraceful buildings still in use at Sing Sing and on Blackwell's Island are attacked and scored with courage and convincing argument.

The most promising feature of the New York correctional system, as known, is perhaps in its centralized control and in the organization of its industries. It would seem from this report that the full possibilities of these features have yet to be realized by greater efficiency of administration. That the evil conditions should continue side by side with the good, is perhaps to be expected, so long as there is public indifference to the welfare of the downmost man, and the significance of his future possibilities for weal or woe. The public cannot well continue indifferent, however, in face of the facts that are systematically marshalled in the report of the Prison Association of New York. As a matter of fact, the progress already made is no doubt largely due to the influence of this and other similar organizations. Because of the publicity given by their reports and their speakers to the fallacy of the old methods and the value of more humane and rational treatment, these agencies have become the focus of the forces of welfare work for the unfortunate offender. Because of their efforts, the attitude of the public toward the prisoner is changing with the process of the suns, and with the progress of the sons of men, and with the introduction of the spirit of the Golden Rule. To this end, the publication herewith reviewed, will be a valuable contribution and should be read by all concerned in the great problem of correction.

Chicago.

F. EMORY LYON.

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DIE BEDEUTUNG DER HANDSCHRIFT IM CIVIL-UND STRAFRECHT. BEITRÄGE ZUR REFORM DER GERICHTLICHEN SCHRIFTEXPERTISE. Von *Dr. iur. Hans Schneickert*, Kriminalkommissar am Kgl. Polizeipräsidium in Berlin, Verlag von F. C. W. Vogel, Leipzig, 1906. Pp. 144, V. 4.

Schneickert presents an interesting justification of the existence of the handwriting expert. The cataloguing of the different forms in which handwriting falsification and disguise occur and of the various civil suits that depend upon identification of handwriting points the need of handwriting testimony and raises the question as to the proper method of safeguarding such testimony.

He seeks to have the handwriting expert placed on a level with other experts whose services are accepted without question. In every field of inquiry, as he shows, the expert has won his place only gradually and with effort. Always, in every line of work, there has occurred a gradual standardization of methods of investigation and a

shift from reports of subjective impressions to objective proofs. A similar advance appears in handwriting expertness. The citing of errors on the part of writing experts cannot be quoted as evidence of the impossibility of establishing a science of handwriting identification any more than errors on the part of chemical or medical experts could be cited as undermining all faith in the sciences they represent. Nor is it fair to lay on the trained expert responsibility for the mistakes of untrained and unrecognized pseudo-experts.

None the less, the author recognizes the wide-spread prejudice against the handwriting expert and grants the need of reform in methods of procedure. The question who should be recognized as an expert raises that of his proper training and experience. The custom of regarding as an expert any man whose professional or official life brings him much in contact with writing is regretted. Such opportunity to observe handwriting does not confer the power of analysis so necessary to the expert nor determine the graphic signs of most significance. In this connection Dr. Schneickert considers the connection between handwriting expertness and graphology, the latter being defined as the art of reading character from handwriting. He shows that while the writing expert may indeed make use of the analysis of skilled graphologists, his purpose is a very different one.

In discussing the need of reform in handwriting testimony and the best way of insuring it, the author quotes copiously from men who have given the subject careful consideration, such men as Busse, Meyer, Langenbruch, Gross, and Näcke. Various suggestions are given as to the lines along which the reform should take place, with discussion of the graphic signs least subject to control, of the best methods of instituting comparison between the disputed and proved documents, of the use to be made of photography. Since the publication of Schneickert's treatise, so much has been done in the matter of utilization of modern scientific instruments in identification of writing and standardization of methods of procedure (see Osborn's "Questioned Documents") that Schneickert's suggestions have only general value.

An interesting section of the treatise under consideration is that which deals with the collection of handwriting specimens to be kept for identification purposes, a collection to begin with specimens of the handwriting of all school children at various ages. A system of docking of the specimens of the writings of criminals is suggested, a system which has since been elaborated by the author.<sup>1</sup>

In the second part of his book, Schneickert translated Bertillon's exposition of handwriting identification, with its system of minute comparison and calculation of the mathematical probability of the agreement of details. Bertillon, commenting upon the use of photography in writing investigations, states that it marks the first step forward in such work since the days of Louis XIV, and moves such investigations from the subjective to the objective field. A summary is given of helps in writing investigation, such as tests of paper to show erasures

<sup>1</sup>Die neue Handschriftensammlung der Berliner Kriminalpolizei." *Arch. f. Krim.-Anthropol. u. Kriminalistik*, 1910, 39, 144-178.

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and fractures of surface, means of estimating the time of additions to documents, the testing of inks, the utilization of finger prints—tests which within recent years have been reduced to a science.

University of Wyoming.

JUNE E. DOWNEY.

---

THE PRINCIPLES OF JUDICIAL PROOF, AS GIVEN BY LOGIC, PSYCHOLOGY AND GENERAL EXPERIENCE, AND ILLUSTRATED IN JUDICIAL TRIALS. Compiled by *John Henry Wigmore*. Little, Brown and Company, Boston, 1913. Pp. XVI, + 1179.

Professor Wigmore terms this volume a compilation, I presume, because the major portion of it is devoted to extracts from various authors and reprintings of well-known trials. However, the fact that some nine-tenths of the work is thus derived from other sources must in no way detract from its significance nor minimize the importance of the 115-odd pages in which he has contributed directly of his own constructive thinking. The extracts from 74 different authors and the 161 illustrative cases drawn from court procedure gain their significance primarily when organized as exemplifications of the author's development of his own theme.

This theme is the analysis of the principles of proof, the outlining of a probative science, independent of the artificial rules of procedure. These artificial rules of procedure (admissibility) have, in the author's opinion, tended to monopolize attention to the exclusion of what is, after all, the main activity—the persuasion of the tribunal's mind to a correct conclusion by safe materials. He seeks in this volume, therefore, to present, in tentative form, a novum organum for this neglected phase, "natural" proof, as it might be termed, the probative value of evidence as determined by logic, psychology and general experience and regardless of the rules of admissibility.

The book is intended to be used in law-school work, and in particular to encourage and to train the student of law himself to attack scientifically the analysis and marshaling into systematic and logical perspective of complex masses of evidential data. This task of disentangling proof is fully developed only in Part III; Parts I and II afford a preliminary drill in analysis. To indicate the scope of treatment it will be sufficient here to set forth the table of contents for these two parts.

### Part I. Circumstantial Evidence.

I. Evidence to prove an event, condition, quality, cause or effect of external inanimate nature.

II. Evidence to prove identity.

III. Evidence to prove a human trait, quality or condition.

a. Moral character.

b. Motive.

c. Knowledge or belief.

d. Plan (design, intention).

e. Intent.

IV. Evidence to prove the doing of a human act.

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- a. Concomitant circumstances.
  - 1. Time and place.
  - 2. Physical and mental capacity, tools, clothing, etc.
- b. Prospectant circumstances.
  - 1. Moral character.
  - 2. Emotion (motive).
  - 3. Plan (design, intention).
  - 4. Habit (usage, custom).
- c. Retrospectant circumstances.
  - 1. Mechanical (physical) traces.
  - 2. Mental traces.

### V. The datum solvendum.

In Part II, Wigmore takes up testimonial evidence with reference to the effect on the trustworthiness of testimony of generic human traits (race, age, sex, mental diseases, moral character, feeling and experience), of the testimonial process itself (perception, memory, narration), the extent and sources of error in testimony and the relative probative value of circumstantial and testimonial evidence.

When these portions of the work have been mastered, the student is ready to undertake the "problems" of Part III, which consist of masses of mixed evidence taken from concrete cases and which are designed to be used for mere mental entertainment or for serious analysis and study. That is, Wigmore recommends that his readers practice disentangling from masses of evidence the logical interconnections of the various evidential items and assigning each its proper place and weight. To aid in this process he presents a new and interesting logical schema for determining the "net persuasive effect of a mixed mass of evidence." This schema takes the form of a chart, upon which numerous symbols represent the evidential items and their mutual interrelations. The symbols facilitate the process of ordering ideas into rational sequence and combination. The mere construction of such a chart has surely direct value because of the necessity that it entails for clarity of thinking. Why, indeed, might not exercises of this sort form an admirable feature of courses in logic or in argumentation for all college students, whether prospective lawyers or not?

The reviewer has no authority to evaluate this book as a contribution to legal literature, but as a psychologist keenly interested in the application of psychological experiment to legal problems, he has read this work with the greatest satisfaction and profit.

Cornell University.

G. M. WHIPPLE.

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## BOOKS AND MONOGRAPHS RECEIVED.

**THE FOREIGN BORN INSANE, A Racial Study of the Patients Admitted to the Insane Department of the Philadelphia General Hospital in Ten Years (1903-1912).** By *Charles W. Burr*. Reprinted from *The Journal of the American Medical Association*, Jan. 3, 1914, pp. 25-27.

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INFLUENCE OF PARENTAL DISEASES, HABITS, AND HEREDITY UPON JUVENILE CRIME. By *Haldor Sneve*. Reprinted from the *Bulletin of the American Academy of Medicine*, Vol. XV, No. 5, October, 1913.

THE PHYSICAL BASIS OF CRIME, A SYMPOSIUM. Papers and discussions contributed to the 38th annual meeting of the American Academy of Medicine, Minneapolis, June 14, 1913, pp. 188. American Academy of Medicine Press, Easton, Pa., 1914.

I. MANDATI NEL NUOVO CODICE DI PROCEDURA PENALE ITALIANO. By *Marcello Finzi*. Fratelli Bocca, Editori, Torino, 1914, pp. 136.

SPERGIURO FALSA TESTIMOMANZA E. CALUNMA PRESSO GLI ARABI. By *Marcello Finzi*. From *La Scuola Positiva*, December, 1913, N. 12, Anno XXIII.

LE CONCEPT SOCIAL DU CRIME; SON EVOLUTION. Par *J. Maxwell*, Felix Alcan, Paris, 1914, pp. 450, 7 f. 50.

REPORT OF THE COMMITTEE TO STUDY AND TO REPORT ON THE BEST PRACTICAL MEANS OF CUTTING OFF THE DEFECTIVE GERM-PLASM IN THE AMERICAN POPULATION. I. The scope of the Committee's Work. II. The Legal, Legislative and Administrative Aspects of Sterilization. Bulletin 10A and 10B, 1914, pp. 64 and 150, 20 cts. and 60 cts.

THE UNCONSCIOUS. By *Morton Prince*. The MacMillan Co., New York, 1914. \$2.00.

DEVELOPMENT AND PURPOSE. By *L. T. Hobhouse*. The Macmillan Co., New York, 1914, pp. 382, 10s.

# Journal of

the American Institute of

# Criminal Law and Criminology

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# Journal of the American Institute of Criminal Law and Criminology

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## EDITORIALS

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### PATHOLOGIC VAGRANCY.

The Acting Superintendent of the New York Municipal Lodging House has recently completed a study of 2,000 vagrants. The report contradicts several popular impressions. The majority of the group investigated were not out of employment by reason of age. Only five per cent of them were under 21 years of age and but 6.85 per cent were over 60. Practically all of these persons are natives of America. But 9 per cent had been in New York City less than a year. The average term of residence in the metropolis was 32 years and 4 months. Since 36 years was the average age of the group, these tramps had lived practically their whole lives in the city of New York.

The evidence on which the author bases his belief in the pathologic nature of a large proportion of vagrants is as follows:

About 35 per cent of the homeless men who seek the shelter of the municipal lodging house are unemployable. Twelve per cent of them showed definite evidences of defective mentality. The infirm from age and those handicapped by the loss of a limb represent about as many more. About 10 per cent are habitual loafers and confirmed beggars who have lost the habit of work. Thirty per cent are victims of excessive drinking.

About 65 per cent of the group are victims of seasonal trades which employ many men at certain seasons and few at others, leaving large numbers without definite occupation during several months each year. Probably much of the evidence for defective mentality among these vagrants admits more than one interpretation. Indeed, the author himself suggests what seems to us to be a potent cause of vagrancy when he says that many men when out of work become discouraged and depressed and are then unable to arouse themselves to labor again. It is a result of this, we believe, that many men are unable to make a satisfactory response to our tests of mentality. Much defective mentality, therefore, is not native, but is acquired secondarily.

Judge William N. Gemmill of the Chicago Municipal Court well expressed this thought in our last issue at page 174:

"Among the many arrests each year are thousands who belong to the army of defeat. They are not men and women, but the remnants of them only, from whom have departed hope, pride, ambition, cour-



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age, self-sacrifice and all other qualities which distinguish the human from the animal world. This army of derelicts is an appalling menace to every large city. They all march under the one banner upon which is written in large letters the word Failure. \* \* \* Their weak and emaciated bodies are burned out with drugs and liquor. They are friendless and homeless and hopeless." **ROBERT H. GAULT.**

### THE ANNUAL MEETING OF THE INSTITUTE.

As at present arranged, the sixth annual meeting of the American Institute of Criminal Law and Criminology will be held in Washington, D. C., on October 23. All meetings are scheduled to be held in the New Willard Hotel. At 6:30 p. m. an informal dinner will be served to members and their friends, and this will be followed at 8 o'clock by a "Report on the American Society of Military Law," by Col. Nathan William MacChesney, president of the society.

The first session will be opened at 9 o'clock a. m. by the Honorable Quincy A. Myers, Chief Justice of the Supreme Court of Indiana, who will deliver the President's Address. This will be followed in the course of the morning session by reports of the committees on Employment and Compensation of Criminals; Sterilization of Criminals, and the Classification and Definition of Crimes.

In the afternoon session there will be reports on Insanity and Criminal Responsibility; Judicial Probation and Suspended Sentence; Draft of a Code of Criminal Procedure; Indeterminate Sentence; Crime and Immigration and Criminal Statistics.

Information as to details may be obtained from the Secretary, Professor Henry W. Ballantine, Madison, Wisconsin.

**ROBERT H. GAULT.**

## GET AT THE BEST IN MEN.

The problem of the prison official is precisely that of the educator: to find the best that there is in an individual and to use it as the basis for the development of desirable habits and attitudes. The educator in our regular schools who approaches his work from this viewpoint soon finds that he has discovered a valuable antitoxin for the undesirable dispositions of his disciples. It is no different in the prison and in the reformatory. At one time this thought was on the plane of mere hypotheses even in respect to our public education. Now it is common sense, and as such it is expressing itself with wonderful emphasis in the establishment of sanitary prisons, farms and colonies for criminals and defectives all over our country. The extent of this movement is

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indicated in Judge Gemmill's address in the last issue. These institutions may check over the catalogues of morons, feeble-minded, etc., which are being supplied by our laboratories, and so supply a needed supplement to them against the day when an approximately perfect system of mental tests shall have been developed.

In this connection it is appropriate to publish a letter received recently by the undersigned from the editor of *The Joliet Prison Post*, Mr. Peter Van Vliissingen. The letter speaks for itself.

---

"Anent your leading editorial for March, may we call your attention of the May number of *The Joliet Prison Post*?

"Under the title, 'Authoritative Announcements from Actual Work,' we state what this institution is beginning to do. There are some prisoners here who are earnestly supporting the warden's plans to make the life of the men here as normal as the conditions and the requirements of an institution of this character will allow.

"The attitude of the prosecution toward a person on trial, makes it impossible for the accused person to disclose himself to the jury and to the judge as many accused men would like to disclose themselves.

"We are undertaking here, where the administration is accepting the policy of eliminating punishment and where the men are accepting the policy of eliminating condemnation, to make the relationship of the authorities to the prisoners who are subject to that authority, such that the prisoners can and will make themselves known exactly as they are.

"Under this policy the men tell many things that, where the authorities are not seeking the welfare of the men, would count against them, things that, under the policy of prosecution as practiced in the courts, they keep hidden as far as they are able to keep them hidden; but besides this, the policy of good faith between the administration and the prisoners, is bringing out qualities and virtues in the prisoners which the prosecution will not have brought out and which in any event the prosecution will not allow to be taken into account at a trial.

"Dealing with men on the broad basis of their natural human rights and taking into account the whole quality of their character, instead of dealing with them wholly on the ground of a particular offense, is disclosing a new element in man. This it will be necessary to take into account, in any proper consideration of the question of criminology and in determining in what way to deal with men who have committed social offenses so as to protect society and at the same time to preserve for society what social value, despite the offences the man has committed, there may still be in the man.

## GET AT THE BEST IN MEN

"Artificial plans have no place in the purpose which is being worked out here. There is, we believe, no 'holding over, in another form, of the conventionality that has associated goodness with a certain anaemic passivity.' We are dealing with real life and we accept the issues which the actual life of the men here present.

"Here is a community which has its problems just as any other community has its problems. We have taken up the burden of solving our problems in accordance with the truths of human life so that what we actually learn here may be of benefit everywhere. It is in this sense that we feel that this place is a social laboratory.

"In the editorial, 'The Convicted and the Unconvicted,' in the May issue of the *Prison Post*, p. 226, occurs this statement:

"The honor system contemplates relieving prisoners who are believed to be worthy of trust, from the surveillance of a keeper, so as to give the prisoner a chance to show that the watchfulness of the keeper is not necessary, that there is something in himself that can be trusted, to show that he is able, despite the conviction of a particular defect, to live true to the qualities in him that go to make a good citizen."

"This statement seems to express the same thought that is expressed in the last paragraph of the editorial in the March issue of the *JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY*, already referred to.

"We are proceeding upon the principle that the problems of neither individual nor social life can be solved by dealing only with the wrong in man; that the solution is to come through awakening and building up the good in man. And this is being made a place of actual experiment and test. We are not given to speculation. What we say is in some measure proved before we say it.

"We may move forward slowly and with little spectacular demonstration but what we do will be real. It will serve every other community as well as our own.

"We wish you to know that we who are helping to make things better are encouraged and strengthened in finding that you are pointing out the things which we, too, have felt should have and must have attention."

ROBERT H. GAULT.

## FAREWELL MESSAGE TO THE INTERNATIONAL UNION OF CRIMINAL LAW.<sup>1</sup>

By G. A. VAN HAMEL.

The time at my disposal has not sufficed for preparing a contribution suitable for this Memorial volume. But I should like to add, to the valuable essays of the other contributors, at least a brief message of reminiscence and of farewell.

It is a message of reminiscence; for I have been with our Union throughout the brilliant period of its building up and have had my share therein.

It is a message of farewell; for now, at the age of seventy, under the law of my country, I have been retired from my professorate, and the limitations of human life bid me to expect before long to say farewell to all activities.

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My reminiscence begins with my colleagues PRINS and VON LISZT and their exchange of ideas with me, in 1889, upon the possibilities of opening new paths for the international advancement of science, legislation, and practice, in the field of Criminal Law. In the spring of that year, Von Liszt and myself, strolling in the Siebengebirge mountain paths one fine Sunday morning, formed the resolution to found and build an international union dominated by a new spirit. As we saw the then situation, in all countries alike was felt the need of renovation and re-inspiration in the doctrines of criminal law, and a hearty response from all quarters would greet a summons to such a task. My own acquaintance with Von Liszt had begun some time before then. A few years after entering my professorate, I had promised to deliver a paper at the International Prison Congress in Rome, in 1883, on the subject of "The Limits of Judicial Discretion in Determining Sentences." As I proceeded to develop my theme, I found that the question of judicial discretion in sentences was overshadowed by the larger question of the nature of the sentence itself—the fundamental purpose of penalties. Judicial discretion is merely the appli-

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<sup>1</sup>In the volume published to celebrate the 25th anniversary of the "International Union of Criminal Law" (reviewed at p. 307 in the July number of the JOURNAL) is printed a farewell message ("Zur Erinnerung und zum Abschied") by the distinguished scholar Van Hamel, emeritus professor of criminal law in the University of Amsterdam, member of the Senate, and one of the three founders of the Union. As a retrospect and a forecast, it has a world-wide interest. The translation is by Associate Editor Wigmore of this JOURNAL.—ED.

cation to specific cases of the punishment appointed by law. To lay down principles for the former requires first a conscious settlement of one's point of view as to the meaning of penal repression in general. Without a fixed principle to start with, how can one understand the significance of judicial discretion and its proper limits?

It so happened that I had undertaken this particular subject for my paper because the new Dutch Criminal Code, which went into effect about that time, had taken away all limitations on judicial discretion for the minimum penalties and had to that extent sanctioned entire freedom of judgment. And so, in preparing my paper, I found myself obliged to systematize my views on the purpose of punishment in general.

In the course of this task I was profoundly impressed by the masterly essay of Von Liszt (on the Purpose of Punishment), which had appeared in the third volume of his *Journal of Criminal Law*. I found myself closely affiliated, in doctrinal inclinations, to this fellow-scientist (then at the University of Marburg), and accordingly wrote to him, proposing a meeting at some early opportunity. This meeting took place not long afterwards; and out of it grew a lasting friendship.

Meantime Adolph Prins, in the faculty at Brussels, had published his volume on "Crime and Its Repression." In this powerful work, the use of State force in the repression of crime was examined in a spirit of practical realism; the necessity was emphasized of treating the criminal law as a struggle against criminality; and the consequential doctrine was laid down that we must not stop at symptoms, but must seek to reach causes, precisely as we do with disease, poverty, and other social conditions. Following out these ideas, the treatise of Prins set forth scientific need of tracing out the motives for crime, not merely with a view to doing justice in court, but with a view to developing a science. From the point of view of social philosophy, the thorough study of the general causes of criminality as a social phenomenon would in turn redound to the benefit of the administration of justice.

Prins' work pointed out the distinction between those causes of crime which lay in the man himself and those which germinated in his environment and exercised a fateful influence, not merely on specific conduct, but on the whole character of the individual and even on a criminal group. About this time, moreover, Lombroso's school, in Italy, was developing its positivistic doctrine with its emphasis on

## MESSAGE TO THE INTERNATIONAL UNION

anthropological causes; while in France the social-psychological school, led by Laccassagne and Tarde, was making its advances.

And so, in all directions could be seen an active revival of thought,—a general sense of the need for new knowledge and new achievement, and an effort to satisfy this need. Bench and bar—leaders in practical application, but weaker brethren even in science—needed to be shown this new trend of things, needed to realize that criminal law must be divested of its dogmatic and purely legal character and infused with a spirit of realism in its principles and aims.

This was the contrast to be emphasized—not realism versus idealism, but realism versus dogmatism. The movement did not signify the abandonment of our ideals; for the ideal, in human affairs, is inseparable from the actual. But it did declare hostilities against the existing dogmatic attitude, against its inherent and dangerous tendency to lose in legalistic pettiness and dialectic technicality the science of actual life and to end in futility.

On such ambitious and inspiring possibilities ran the thoughts of Von Liszt and myself as we took our walks in the secluded valleys of the Siebengebirge mountains. Shortly thereafter, all three of the founders of the Union met and laid out the plans for its organization and its program of work.

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And so the memories of that high emprise come vividly before me as I take my leave. But one can not say Farewell without casting a glance at the Present, and at the Future, too. For the Past finds in the Present the bookkeeping of its achievements; and only by looking into the Future can we decide what direction to take in the Present.

That the science of criminal law has lost and is steadily losing many of its dogmatic features—this much seems to me indisputable. In the field of the general doctrines of attempt, complicity and responsibility the emphasis is more and more on the valuation of the subjective element, and less and less on the objective element. This is the true realism, and here the influence of the new thinking is inevitable. The objective element in these aspects of criminal conduct is a merely incidental phenomenon, not an essential quality; and while dogmatism is satisfied to deal with appearances, realism insists on dealing with the essential.

The same tendency shows itself, in the theory of penal repression and its methods, in the form of the multiplication and due adjustment of those methods. Pardon, suspended sentence, probation, and the like—all these modern expedients are nothing more nor less than

*not punishing* whenever without actual punishment its purpose may be attained. They represent the sacrifice of old dogmatic tradition with its axioms about retaliation—a sacrifice which has already been made in many systems of law and sooner or later will be made in the others.

In the field of juvenile criminality, the dogma of criminal capacity has already been turned out of court in some countries. At the very first annual meeting of the I. K. V. it was repudiated. If it still persists in numerous countries, it is only as an anachronism, which is explainable easily enough on principles of human nature, but on those same principles is bound to be overtaken by the summons to surrender that rapidly draws nearer. Here, too, we see realism triumphant—an acknowledgement of the truth that the sound principles of education find only a false safety in laws based on fantastic arbitrary distinctions.

In the doctrine of criminal responsibility, realism has abolished the fixed boundary line between normal and irresponsible persons. It emphasizes the treatment of defective persons as a special problem, which requires patience for its solution. And in this field the modern controversy over terminology—whether we shall regard the measures as aiming at punishment or at social protection—seems to me only to obstruct and delay the solution; here the anti-dogmatists may well be asked to make a sacrifice to the dogmatists; I recommend them to admit that names do not matter much and to consent without scruple to the retention of the term “punishment.”<sup>1</sup>

In the matter of the judge's power over penalties, and his freedom from fixed rules predetermined in the code for all varieties of penalties and circumstances, the new doctrine tends steadily to enlarge his powers. A notable example of this is the apparently universal demand for special juvenile courts. But this single instance must not remain the only one; there is in principle no such radical difference between juveniles and adults that the application of penalties should distinguish the two classes radically. The real place of importance for the development of the criminal law in anti-dogmatic directions lies in the judge's function. For the advancement of the new ideas it is far more important what the judge thinks than what the legislator thinks. England can teach us that; there is no developed science of criminal law in England; but they may well be proud that they possess a judiciary who are ever advancing, ever disposed to regard

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<sup>1</sup>“Straf” does duty in German both for “punishment” and “penalty”; so that the word is not quite as harsh as our “punishment.”—TRANSL.

## MESSAGE TO THE INTERNATIONAL UNION

the subject realistically—a judiciary esteemed and trusted throughout the nation.

In that direction points the future. *On the cultivation of a competent judiciary every country must rely for the future development of an increasingly realistic criminal law.*

Criminal etiology—research into the causes of criminality—has, to be sure, in its achievements fallen far short of the expectations of a quarter of a century ago. This much we must concede. But why should we doubt of acquiring better knowledge, as the future unfolds? Truth can not be discovered instantly. It needs its centuries. That need not discourage us. Let us not be deterred, by the demand that we know the whole, from at least knowing what is attainable; and the attainable, in my opinion, lies (as I have already said) in the improvement of penal methods, and this in turn lies in the hands of the judge.

And so, my farewell counsel is, first and foremost, *Develop and improve the judge!*



## MEETING OF THE WISCONSIN BRANCH OF THE INSTITUTE.<sup>1</sup>

### I. REPORT OF COMMITTEE ON CRIMINAL EXPERTS.

C. B. BIRD, CHAIRMAN.<sup>2</sup>

*As to Exceptions to Judge's Charge.*—This committee was asked to consider the following matter:

"The formulation of necessary amendments to the laws of the state to prevent the taking of exceptions to the judge's charge, except where the true rule has been given to the court by counsel in time to correct the charge before the jury returns a verdict."

At the 1912 meeting your committee suggested two statutes, either of which would accomplish the desired result, but recommended against the passage of either.

The reasons for such recommendation are summarized in the report (Proceedings for 1912, pages 274 to 277), the sum of which was that on the whole less good than evil would be likely to result. The recommendation of the committee that "the passage of such a statute be excluded from our endeavors" was adopted (page 27). Since then the 1913 legislature (joint resolutions No. 30) has requested the Supreme Court to report a proposed simplified code of procedure; and also enacted (Chapter 214, Laws of 1913, 2405) that the Appellate Court may reverse in the interest of justice whether or not "proper motions, objections or exceptions appear in the record." The existing rule in Wisconsin now is that no error will accomplish reversal unless, except for the error, a different result would probably have been reached. In other words, unless the error complained of has produced an unjust judgment it is harmless.

It therefore seems that the question here considered has become obsolete and that we should adhere to our former vote that it be dropped from further consideration. We so recommend.

*State Accredited Alienists.*—A bill to authorize the appointment of such alienists and regulate expert testimony where the defense of insanity is made in criminal cases has been presented to the last two legislatures, but not yet passed.

During the 1911 legislature Senate Bill No. 320 was introduced

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<sup>1</sup>The annual meeting of the Wisconsin Branch of the Institute was held at Green Bay on June 23-24. We publish here the reports that were submitted at that meeting.—[Eds.]

<sup>2</sup>The membership of this committee is as follows: C. B. Bird, A. C. Umbreit, M. B. Rosenbury, F. E. Bump.

## ON CRIMINAL EXPERTS

February 16, 1911 (Senate Journal, page 782), providing, in substance, for the appointment by the governor of from ten to twenty such alienists from whom, in case such issue is raised, the trial judge should choose three to examine the accused and testify to their conclusions, and giving both parties authority, in the discretion of the court, to call two other expert witnesses on each side. The text of the bill is printed in the proceedings of our 1911 meeting (pages 4-5, appendix).

The bill was amended by increasing the number of the board from "ten to twenty," as in the original bill, to "from twenty-five to fifty" and by changing the number of others who might be called on each side from "two" to "three," and by increasing the compensation from "not more than fifteen" to "not more than twenty-five dollars" per day and expenses. The amendment was adopted, but the bill as amended was then defeated (Senate Journal, page 841).

At our 1911 annual meeting, held in December, your committee recommended that another attempt be made to secure the passage of such bill. Inasmuch as the opposition to the bill was based somewhat upon a decision of the Supreme Court of Michigan (*People v. Dickerson*, 129 N. W. 199), holding a similar statute unconstitutional because not "due process of law," your committee submitted certain authorities apparently not considered by the Michigan court and expressed their opinion that such bill would probably be held valid in Wisconsin (See 911 Proceedings, page 2 and 3 appendix). This recommendation was adopted (Proceedings, page 51).

At the 1913 session of the legislature Senate Bill No. 189 (substantially similar to the 1911 Senate Bill No. 320) was introduced. On April 15 it was amended by increasing the number of discretionary witnesses on each side from two to three and the compensation to "not more than twenty-five dollars per day and expenses." On May 13 the bill, as so amended, was passed by the Senate by vote of twenty-two *Ayes* to two *Náyes*. On May 20 the Assembly Judiciary Committee reported the bill without recommendation. Assemblymen Anderson, Heading, McComb and Rosa were in favor of concurrence, and Assemblymen Hurlbut, Dolan, Frederick and Hood opposed. On May 26 the Assembly refused to concur (there being no roll call, we do not know the vote) and the bill was again defeated.

In our judgment, the measure is meritorious, and an attempt should again be made before the next legislature to secure its passage.

*Appointment of District Attorneys by the Court.*—At our 1911 meeting your committee reported that, in their judgment, the appointment of district attorney by the court would aid to accomplish "a

### C. B. BIRD

much more efficient administration of our criminal law," but, in view of the probable opposition, the committee reported "whether it is expedient to enter a contest for its accomplishment we leave it to this body to decide." (Appendix, pages 3 and 4.) After considerable discussion (Minutes of Proceedings, pages 30 to 46), the matter was re-referred to the committee without action (page 46).

At our 1912 meeting Mr. M. B. Rosenberry, on behalf of our committee, made a special report as to district attorney (Proceedings, pages 278 to 283), to which was annexed a table showing the method of election, term of office and salary of district attorney in the several states (pages 284 to 292). The report contained no specific recommendation, but stated that the necessary constitutional amendment to permit the appointment of district attorneys by either the governor or presiding judge probably could not be passed and that the only practical remedy is education of the electors with references to the responsibility of the office and necessity for choosing experienced and qualified persons to fill it (page 282). The report of the committee was adopted, which action apparently meant that the conference indorsed the views there expressed (1912 Minutes, page 30).

The question here involved is a large and troublesome one.

The emphasis heretofore has been laid upon the inefficiency of the young, inexperienced district attorney. Now, however, people are beginning to lay emphasis upon the danger of partisan prosecutions for the sake of making a record. It is even proposed of late that the poor defendant is at a disadvantage and should have protection through the office proposed to be created of "public defender." Thus the pendulum swings.

The truth is that the ideal district attorney should be such a paragon of energy, poise, knowledge and experience that he can be nowhere found. The young man is usually energetic, zealous and inexperienced, while the older man would be unwilling to devote the energy and zeal which are at many times required and the tedious detail work always required, but would furnish the poise and mature judgment which is often requisite.

The situation is solved in part by the present custom of electing energetic young men to the office to whom the county board or the court furnishes assistance by appointment of special counsel in important cases. However, youth is not always willing to ask for assistance nor the public to countenance extra expense to one supposed to do all of the work at a stated salary. A practical solution might be found in creating the position of "county counselor." The expense probably would not greatly, perhaps not at all, exceed the special expense now

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being incurred. The district attorney would then do the active work of the office, having an older head with whom to consult and who would assist in the prosecution of important cases. However, there are serious objections to both the practicality and to the idea itself.

Probably the only thing to do at present is to create a better public sentiment in these three respects: First, the importance of the office, and duty the electors owe to filling it; second, that assistance in important cases should be a matter of course, and in nowise a reflection upon the district attorney himself, and, third, such assistance should be provided not merely for trial, but often for consultation and advice.

### II. REPORT OF COMMITTEE ON UNIFORM PRACTICE OF STRIKING JURORS IN CIVIL AND CRIMINAL ACTIONS.

B. R. GOGGINS, CHAIRMAN.<sup>1</sup>

At the annual 1911 meeting, this committee reported upon the question

“What changes, if any, should be made in the existing law governing peremptory challenges and the impaneling of the jury in criminal cases?”

as follows:

“This inquiry has in it two questions: What changes, if any, should be made in existing law (a) governing peremptory challenges? and (b) the impaneling of the jury?

(a) The state and defense should have the same number of challenges in all criminal cases irrespective of the number of defendants. This is the rule in civil, including tort, actions and works injustice to no one.

(b) Under our state constitution one charged with crime is entitled to trial by ‘an impartial jury.’ (Sec. 7, Art. I.) It is therefore clear that any legislation impairing this constitutional guarantee would be void. The court, in passing on the qualifications of jurors, would have the same powers and the same duties without as with any valid legislation. Our Supreme Court has taken advanced ground on this subject. (*Burns v. State*, 145 Wis. 373.) It does not sanction the abuses once quite common in this country and still to be found in some jurisdictions. Trial courts can as readily follow the practice authorized by our Supreme Court as that laid down by any constitutional statute. Duties of the trial court in this respect relate to matters occurring in court over which the court has direct control. It is difficult therefore to perceive wherein legislation in this behalf would be of any benefit and we recommend none.

As to the striking of a jury we are of the opinion that the

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<sup>1</sup>The membership of this committee is as follows: B. R. Goggins, F. C. Winkler, H. O. Fairchild, A. J. Myrland, Geo. L. Williams.

B. R. GOGGINS

method now followed in civil cases (Sec. 2851, L. 1909, p. 932) should be adopted in all criminal trials so far as practicable. We see no valid legal objection thereto. In civil cases the results are so satisfactory that no one would voluntarily go back to the old practice and the wonder is that the change did not come earlier. To conform to the number of strikes allowed, twenty jurors should be drawn, of course, instead of eighteen, in all trials for offenses less than capital. This practice works so satisfactorily to both sides that juries are now often drawn by agreement of the parties in this manner in such criminal cases.

In capital cases twenty jurors should be likewise drawn. Each side should have eight peremptory challenges, according to the present practice, and the other four strikes should be exercised after there are twenty qualified jurors in the box and each side has exhausted, to the extent it may elect, its said eight peremptory challenges. The reason for this difference in capital cases is that it sometimes happens that the parties do not exercise all the peremptory challenges they are entitled to and it would be unwise to adopt a practice that would almost surely require at the start the drawing of more jurors than the regular panel would furnish.

In all criminal cases, after the original panel has been exhausted, additional jurors should be obtained from the list returned by the jury commissioners, except when such list has been exhausted, when the court may obtain the number required by special venire.

In line with these recommendations the members of the committee signing this report herewith submit a part thereof proposed amendments of Secs. 4689 and 4690, Stats. 1898, marked Exhibit 'B' and made a part hereof."

This report was adopted with the single amendment—to wit, the insertion of the words "unless the court shall otherwise direct" between the words "exhausted" and "when" in the second last line of said Exhibit "B" thereof—which said Exhibit "B," as so amended, is attached hereto as Exhibit "A" and made a part of this report.

A bill was accordingly drafted and introduced in the 1913 legislature. It went before the Joint Judiciary Committee, and arguments in favor of its passage were made before that committee by members of this branch.

We know of no one who appeared in opposition thereto. However, it was not received favorably, and the legislature went so far in opposition thereto as to amend Section 4701 Stats., making Section 2851 Stats. inapplicable to criminal cases.

We are still of the opinion that said report of this committee and the action of this branch thereon were and are sound and recommend that the legislation so recommended be urged for passage before

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the 1915 legislature, including appropriate amendment of Section 4701.

While agreeing to the foregoing recommendations in substance, members of the committee make special recommendations on some points.

Geo. L. Williams is of the opinion that "special venires" should be entirely done away with and recommends that the words in said proposed Section 4690

"unless the court shall otherwise direct, when the court may summon additional jurors by special venire" be stricken out and that the following be substituted in lieu thereof:

"Thereupon the court shall require the jury commissioners forthwith to make up another list of such number as the court shall direct, and the drawing shall proceed as before; other lists may be made up in the same manner if necessary until a jury is secured."

Among other changes, H. O. Fairchild suggests that after the words "challenge for cause" in each of said sections there should be inserted the words "or favor."

Judge Wickham makes the following suggestions relative to amendments to Sections 4689 and 4690, with proposed drafts of such sections, as follows:

"1st. The subject of obtaining a jury in Circuit Courts where the number selected are insufficient is covered by Sections 2533c and 2533d. Any amendment to the statute upon this subject I think should be an amendment of these sections instead of an amendment to Section 4690. It frequently occurs during a term of court that two or three extra jurors are needed in a criminal case. Such jurors can often be obtained from bystanders or by issuing a special venire instead of drawing them from the list returned by the jury commissioners. If they were obtained from the latter list it might be necessary to adjourn court for a day or more to secure their attendance. There may be certain cases where it would be more satisfactory to select the jury from the list returned by the jury commissioners. I think the matter should be left to the discretion of the court and that if any amendment should be made, Section 2533d should be amended accordingly.

2nd. The words 'According to the present practice' in amendment to Section 4690, as proposed, might involve some uncertainty as to what the present practice is.

I have prepared and herewith enclose a proposed amendment to Sections 4689 and 4690 which I think would cover the subject. It may not be any better and perhaps not as good as your Exhibit A, but it occurred to me that it stated the matter a little more clearly.

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Section 4689. When the accused is charged with the commission of an offense not punishable by imprisonment for life the state and the defense each shall be entitled to four peremptory challenges and no more, and the jury shall be selected in the same manner as is provided by Section 2851, except that twenty jurors instead of eighteen first shall be called.

Section 4690. When the accused is charged with the commission of an offense punishable by imprisonment for life the state and the defense each shall be entitled to twelve peremptory challenges and no more. Twenty jurors, not including those excused for cause or challenged peremptorily, shall be kept in the box until each party shall have alternately exercised or waived eight peremptory challenges and from the twenty jurors then remaining the jury shall be selected in the manner provided by Section 4689."

Judge Higbee, while cordially agreeing in general with the views suggested by the above report, emphatically urges his disagreement with the statement that our Supreme Court took advanced ground in the case of *Burns v. State*, 145 Wis. 390, as stated in said report.

*Exhibit "A."*—Amend Sections 4689 and 4690 Stats. 1898 so as to read as follows:

"Section 4689. Upon the trial of any person or persons upon any indictment or information for an offense not punishable by imprisonment for life the state and the defense shall be each entitled to four peremptory challenges and no more, those allowed to the defense to be divided equally, as practicable, among the defendants by the court when there are more than one defendant. Twenty jurors shall be called in the action and from the twenty remaining after challenge for cause each side shall be entitled to four peremptory challenges. The challenges shall be made alternately by the parties, one at a time, the prosecuting attorney beginning; and when either party shall decline to challenge in his turn such challenge shall be made by the clerk by lot.

Section 4690. In trials for any offense punishable by imprisonment in the State prison for life the defense shall be entitled to challenge peremptorily twelve persons returned as jurors and no more, to be divided equally, as practicable, among the defendants by the court when there are more than one defendant; and the prosecuting attorney shall be entitled to the same number of peremptory challenges allowed to the defense and no more. Twenty jurors shall be called in the action and from the twenty remaining after challenge for cause and after each party, to the extent he may elect, has exercised his right to challenge peremptorily eight jurors according to the present practice, each party shall be entitled to four peremptory challenges, such challenges to be made by the parties or the clerk as provided in Sec. 4689. In all criminal trials when the original panel of thirty-six jurors has been exhausted, additional jurors shall be drawn from the

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list returned by the jury commissioners until such list shall be exhausted, unless the court shall otherwise direct, when the court may summon additional jurors by special venire."

### III. FINAL REPORT OF COMMITTEE ON CONVICT LABOR AND COMPENSATION TO THE DEPENDENTS OF CONVICTS.

ARTHUR F. BELITZ, CHAIRMAN.<sup>1</sup>

Since the submission of the last previous report of Committee F, two years ago, the agitation upon the proposition of convict labor and compensation to the dependents of convicts has been fruitful beyond the fondest hopes of the committee. Legislation has been enacted which places Wisconsin as far in the lead in this field as it is upon so many other questions of public policy. The results accomplished were made possible very largely by the enlightened interest and hearty co-operation of the state board of control of Wisconsin, which is the best assurance that the statutes thus placed upon the books are going to be administered with purpose and effectively.

In this situation, the only remaining duty of your committee is to spread upon the record of the Institute copies of the acts referred to. On the subject of convict labor in general, we have the broad and comprehensive provisions of Chapter 716, Laws of 1913, creating Section 4918m of the statutes, viz.:

"Section 4918m. 1. The state board of control of Wisconsin is empowered to establish various industries for the employment of prisoners in the state reformatory and in the state prison, and to manufacture articles for use by the state and its public institutions, and by political division of the state and their public institutions, and for sale in the open market. The said board shall fix the price of all articles produced as near the market price as possible.

2. As soon as the state board of control of Wisconsin is prepared to furnish prison products, it shall be the duty of said board to give notice to the proper officials of the state and its public institutions and of the political divisions of the state and their public institutions of the kind of kinds of products that it has manufactured or is prepared to manufacture, and on or before October first in each year thereafter, the proper officials of the state and its public institutions and of the political divisions of the state and their public institutions shall report to said board and give to said board estimates of the amounts of such prison products which they will require for the ensuing year.

3. The state and its public institutions and the political divisions of the state and their public institutions shall not,

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<sup>1</sup>The members of the committee are as follows: Arthur F. Belitz, Judge C. L. Fifield, Judge C. B. Rogers, Judge N. B. Neelen, Marion N. Ogden, Rosa Perdue, E. A. Ross, W. F. Greenman, Mrs. G. A. Hipke, W. A. Phillips.



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without permission from the state board of control of Wisconsin, purchase any such supplies, other than road-building material, except from the state board of control of Wisconsin. Any official violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not to exceed one hundred dollars, or not to exceed six months' imprisonment, or both.

4. Whenever the state board of control of Wisconsin refuses to grant permission to purchase supplies elsewhere, the state department, or political division, or public institution to which permission is refused, may appeal to the governor, whose decision shall be final.

5. The state board of control is empowered to purchase and install in the state reformatory and in the state prison machinery for the employment of the labor of prisoners; to lease or purchase land within the state for the employment of prisoners at farm work; to construct temporary barracks for prisoners employed outside the prison inclosure; to lease or purchase beds of limestone suitable for the manufacture of fertilizer, and beds of rock suitable for road-building material and the right to invest a sufficient sum of money in raw materials for use in manufacturing; and to appoint and fix the salaries of skilled workmen and officials needed to conduct the prison industries.

6. The state board of control of Wisconsin and the state highway commission are empowered to use state convicts in the construction and maintenance of such roads or driveways as they may select, and in such manner and upon such terms as the two bodies may agree upon, and to report to the governor for the use of the legislature of 1915 their findings in the matter and their view as to the availability of convicts in state road construction.

7. The state board of control of Wisconsin shall credit prisoners with compensation, which shall vary for different prisoners in accordance with the pecuniary value of the work performed, willingness and good behavior.

8. The state board of control of Wisconsin shall make, in its biennial report to the governor, a statement showing in detail the amount of each of the various articles produced in the prison industries, the disposition of these articles, the cost of the raw material purchased, the new machinery installed, and the cost thereof, the land purchased or leased and the cost thereof, the rates and total amount of wages paid to prisoners."

For the purpose of furnishing still broader opportunities for the non-union labor of our public charges, with the most direct and striking public advantages, specific authority was granted by the legislature to further the urgent state-wide project of improving roads and highways, by the efficient investment of convict labor. No doubt the all around beneficial results to be achieved by this progressive measure

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must, of its own momentum, inevitably lead to further extensions of needed public works. The theory that those who have breached social law may retrieve their lost honor and manhood by the penitence of social service and social betterments is eminently just and right. Economically it offers the least minimum disturbance of general industrial and free labor conditions. Politically it points the way to the most effective solution of many problems of public improvements. The act referred to is Chapter 717, Laws of 1913, creating Section 4937m of the statutes, viz.:

“Section 4937m. 1. The state board of control of Wisconsin is authorized and empowered to employ inmates of the Wisconsin state prison in the construction and improvement of such roads and highways as the state board of control of Wisconsin and the state highway commission may determine, in such manner and under such terms as may be agreed upon.

2. For each such convict so employed, the state board of control of Wisconsin shall set aside for such work performed, such a per diem as in the discretion of said board may seem proper and just; said money shall, as the state board of control of Wisconsin may determine, be paid either to such convict or to the members of his family dependent upon him for support, in the same manner as is provided by statute for the disbursement of convicts' earnings.

3. The state board of control of Wisconsin is authorized to purchase or lease such tools and machinery as said board and the state highway commission may deem necessary for the purpose of carrying out the provisions of this section.

4. The state board of control of Wisconsin and the state highway commission are authorized to investigate stone quarries and gravel pits for the purpose of determining what may be proper material to be used in the construction and improvement of such highways, and said board and the state highway commission are also authorized to investigate the methods employed in other states in reference to the construction of highways by state convicts.

5. The state board of control of Wisconsin is hereby directed to make a report of such investigation and of the result of the operation of this law, such report to be made to the governor before January 1, 1915, and said board is also authorized to make any recommendations that it desires in reference to the employment of convicts on road construction and highways, such recommendations to accompany said report.”

The most gratifying principle, however, established by the new legislation is that the earnings thus to accrue shall go to the convict, and eventually to his dependents, who were deprived of them by the incarceration of the family provider. This act is Chapter 353, Laws of 1913, creating Sections 4942a and 4942b of the statutes, viz.:

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"Section 4942a. The state board of control of Wisconsin is hereby authorized and empowered to provide for the payment to prisoners confined in the state prison or in the state reformatory of such pecuniary earnings and for the rendering of such assistance as it may deem proper, under such rules and regulations as it may provide. Such earnings shall be paid out of the fund provided for the carrying on of the work in which the prisoner is engaged when employed on state account, and by the contractor when the prisoner is employed under contract.

Section 4942b. Any money arising under Sections 4942 or 4942a of the statutes shall be and remain under the control of the state board of control, to be used for the benefit of the prisoner, his family or dependent relatives, under such regulations as to time, manner and amount of disbursements as the board may prescribe; but should any such prisoner willfully escape from the state reformatory or the state prison or become a fugitive from justice, or commit any breach of discipline at either institution, the said board of control may, in its discretion, cause the forfeiture of all earnings remaining to the prisoner's credit and the same shall be replaced in the fund from which it was originally taken. It is further provided that in case of earnings paid by the contractor to the prisoner employed under the contract, same shall be placed in the current expense fund of the institution in which the prisoner may be confined."

Similar but more positive provision was made as regards county prisoners by the so-called "Huber Law."

This is Chapter 625, Laws of 1913, creating Section 697c of the statutes, viz.:

"Section 697c. 1. Upon the completion of any such workhouse the county clerk shall notify in writing each justice of the peace, police justice and the judge of every court held in his county of the fact and thereafter whenever any male person over sixteen years of age shall be convicted within such county of any offense of which a justice of the peace under the general law has jurisdiction to hear, try and determine or any person convicted in any court of any felony, where jail sentence is imposed by the court, he shall be punished by imprisonment in the workhouse or in the county jail as provided in the next subsection in the discretion of the court, at hard manual labor, and the commitment shall be to such workhouse at hard manual labor. Any person committed to such workhouse who shall, being of sufficient ability to do so, refuse to work diligently may be punished by being placed in solitary confinement therein not to exceed ten days for each refusal to so work, the period of such confinement being discretionary with the superintendent, and shall receive bread and water only during such time. No intoxicating beverage shall be furnished to or used by any person committed to any workhouse during his confinement therein.

2. (a) In any county, having no workhouse, such sentence

## CONVICT LABOR AND COMPENSATION

shall be to the county jail at hard labor. Any person so committed shall be required to do and perform any suitable hard labor for not to exceed ten hours each day, except in case of farm labor, not less than ten hours nor more than twelve hours each day, Sundays and holidays excepted, provided for by the sheriff anywhere within said county. The court sentencing such persons shall have power at the time such sentence is imposed or at any time thereafter during the time of such sentence, to direct the kind of labor at which such person shall be employed and the nature of the care and treatment such person shall receive during such sentence. Such direction of such court shall be based upon a reasonable consideration of the health and training of such person and his ability to perform labor of various kinds and the ability of the sheriff to find and furnish various kinds of employment. The county jail of such county is extended to any place within the county where said work is so provided by the sheriff. The sheriff shall at all times have the custody of such convicted person.

(b) Every person employed under the provisions of this subsection who shall perform faithfully all the duties assigned to him, shall, for willingness, industry and good behavior in such performance, be entitled to a deduction from the time of his sentence of one-fourth of the time thereof. Any such person who, being of sufficient ability, shall refuse to work diligently may be punished by being placed in solitary confinement not to exceed ten days for each refusal so to work, and shall receive bread and water only during such time. Any such person who shall escape or attempt to escape shall be deemed guilty of a crime and on conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the state prison or county jail not more than one year.

(c) Any person who shall knowingly furnish to such convicted person, and any such convicted person who shall use any intoxicating liquors or drinks shall on conviction be punished by commitment to the county jail at hard manual labor for not less than thirty days and not more than six months.

(d) It shall be the duty of the sheriff to make contracts in writing for the employment of all such convicted persons, where not employed in doing work for the county, and to make all needful regulations for the profitable employment of such persons and for the collection of their earnings. And for unreasonably neglecting or refusing to carry out all the provisions of this section the sheriff shall be subject to a fine of not to exceed one hundred dollars, and for a second offense shall be removed from office on charges duly preferred against him and proof of such failure.

(e) At the time of sentencing such person to hard labor the court shall by the taking of such proof as may be necessary, same to be a part of the costs in said action, determine what person or persons, if any, are actually dependent on such person

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for support and the names of such person or persons shall be placed in the docket of said court and also in the commitment of such person to the county jail. And the court shall at the same time designate the person to whom payments are to be made for such dependent person or persons, as hereinafter provided, the name of which person shall also appear in the docket of said court and in said commitment. It shall be the duty of the sheriff at the end of each week to pay over to the person designated in said commitment for the person or persons so found to be dependent on such convicted person for support, a sum equal to the value of the earnings of such person, collected by him. In case such convicted person has worked for the county, then the sheriff shall, at the end of each week, deliver to the person so designated to receive same an order on said county, payable to the person, for an amount equal to one dollar per day for the number of days that such person has actually worked for such county. Said order shall state who has earned said money and who are entitled to same for support.

(f) And it shall be the duty of the county treasurer of said county to pay said orders out of any available funds of said county on same being presented to him for payment.

(g) All money collected by the sheriff by virtue of this section and not otherwise disposed of shall, at the end of each month, be turned over to the county treasurer of said county as the property of said county, together with an itemized statement showing by whom same was earned and paid.

(h) It shall be the duty of the sheriff to render to the county board, at each session or meeting thereof, a sworn itemized statement of all money so collected, by whom earned, by whom paid and also all sums paid out, to whom paid and for whom, including the orders drawn on said county as provided herein.

(i) In counties in which sheriffs are paid a salary, sheriffs shall receive no extra compensation in carrying out the provisions of this subsection; and in counties in which sheriffs are paid fees, such sheriffs shall receive such compensation as may be fixed by the county board of any such county; provided, that until such time as such compensation shall be so fixed, such sheriffs shall receive five cents per mile for each mile actually and necessarily traveled in carrying out the provisions of this subsection, which compensation shall be paid by the county."

In addition to all the foregoing, there was added to Section 573f of the statutes, by Chapter 669, Laws of 1913, the following subsection, viz.:

"11. The board of control shall make a general survey and investigation of the question of aid to mothers and dependent children of this state and shall report its findings and recommendations to the next legislature not later than March 1, 1915."

Your committee is informed that a beginning has been made in the execution of all the acts listed above and that their administration

## TRIAL PROCEDURE

will be vigorously proceeded with. As a mark of the utmost confidence in the efficiency of the authorities charged with those functions, we express the belief that our work is finished, and recommend that Committee F be now dissolved.

### IV. REPORT OF COMMITTEE ON TRIAL PROCEDURE.

C. A. FOWLER, CHAIRMAN.<sup>1</sup>

Your committee on trial procedure reports as follows:

By request of the president we indicate the statutes in force, passage of which was recommended by this committee.

Section 4724a, Wis. St., passed in 1911, relating to writs of error by the state in criminal cases.

Section 456a, Wis. St., passed in 1911, requiring a defendant to present objections to an information or indictment before jeopardy has attached, and providing that presentation of them afterwards shall operate as a waiver of the defense of former jeopardy.

Amendment, passed in 1913, to Section 4086, Wis. St., relating to depositions, authorizing the taking, in criminal cases, at the instance of the state, of depositions of persons in imminent danger of death.

Upon like request we report the recommendations of the committee that have failed of enactment.

The 1910 committee recommended amendment of Section 4786, Wis. St., to authorize examination of the accused and any person suspected of complicity in the offense charged, but providing for appointment of counsel in case claim of privilege was asserted.

The 1910 committee also recommended amendment of Sections 4852 and 4853, Wis. St., to authorize officers of any other state to hold in their custody within this state persons convicted of or charged with crime while conveying them through the state for execution of sentence or for trial in the other state, and protecting the officer against being required to release a person being so conveyed on a writ of *habeas corpus*.

The 1912 committee recommended the passage of an act to authorize a court of record of this state to issue a subpoena requiring a person resident of this state to attend as a witness upon the trial of a criminal case in another state, and subjecting the person to the same punishment for disobedience as is provided for disobedience of a subpoena to attend as a witness within the state, limiting the benefits of the statute, however, to such states as shall have enacted a

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<sup>1</sup>The membership of this committee is as follows: Chester A. Fowler, George Clementson, H. S. Richards, J. E. McConnell, John J. Blaine, J. C. Gilbertson.

A. C. BACKUS

similar statute, so that this state would not be imposing any burdens upon its residents for the benefit of the courts of other states unless such other states imposed like burdens upon its residents for the benefit of our courts.

At the 1910, 1911 and 1912 meetings recommendations were made by this committee, in some form or another, for repealing or modifying the constitutional provision protecting persons accused of crime against self-incrimination. Three members of the 1910 committee did not concur in the recommendation then made. The 1911 and 1912 reports were unanimous.

The committee would recommend further effort by the association to secure the enactment of the two provisions last above referred to. All members of the committee who have expressed themselves favor this course as to compelling attendance of witnesses outside the state in criminal cases. Senator Blain has experienced a change of mind as to the self-incriminating provisions, but the rest of the committee hold to their views as previously expressed.

The printed report of the 1912 meeting, on pages 134 and 135, contains proposed terms of the constitutional provisions and of a legislative act for carrying out these recommendations, and we have no changes to suggest in them.

We have no other changes in the statutes or constitution to suggest.

Below are the names of such members of the committee as join in this report, being those who have favored the chairman with expression of their views.

V. REPORT OF COMMITTEE ON JUVENILE OFFENDER; TRIAL AND  
SUBSEQUENT PROCEEDINGS.

A. C. BACKUS, CHAIRMAN.<sup>1</sup>

Two years ago there was submitted to this committee the problem of what to do with the habitual criminal.

A report of this committee embodying recommendations for the enactment of the habitual criminal act was adopted at our last conference and the proposed act was recommended to the legislature of 1913. The measure was passed by both houses and then was reconsidered by the assembly and passage refused on an occasion when the attendance of members was light.

The same question has been re-referred to this committee and has been reconsidered.

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<sup>1</sup>The membership of this committee is as follows: Hon. A. C. Backus, A. H. Reid, R. E. Smith.

## JUVENILE OFFENDER

This question very properly assumes that a large portion of the inmates of our penal and reformatory institutions are of the habitual criminal class and that existing statutes provide very inefficient methods of protecting society from that class. This situation is very generally recognized. The practice of dealing with habitual criminals has been proven to be wasteful, expensive, useless as an effort to reform the criminal and exceedingly poor protection to law-abiding society. The habitual criminal has no idea of going out to earn his own living or of being useful to society. He spends his life in serving successive prison terms with intermediate periods of liberty during which he is engaged in committing new offenses, preying on society, propagating his class and in being pursued, re-arrested and re-convicted at great expense to the public.

Wisconsin has long had statutes providing for setting up indictments and informations, and establishing the fact of previous conviction. Upon a conviction following such indictment or information and a finding of previous conviction, the legal penalties are increased over those provided for a first conviction. This statute has been almost entirely disregarded. In our experience we have known of but three or four instances in which it has been invoked.

The reasons are not far to seek. The habitual criminal is skillful and diligent in concealing his identity and past record. That is a part of his methods of life. He has many aliases. He avoids haunts where he is known when committing crime. When caught he usually pleads guilty and screens his past. As a result he usually poses before the court as a first offender and the court and prosecution know nothing different. His constitutional immunities enable him to refuse to give evidence against himself, and to refuse to allow such examination, measurement and photographing as might result through identification bureaus in disclosing his record. There have been no means provided for making an issue in respect to his habit of criminality and very poor means of obtaining evidence to prove his character.

We report herewith the outlines of a proposed enactment which we believe will provide an efficient and economical system of dealing with habitual criminals. Since our last report our views have undergone substantial change and the measure proposed herewith is different in some important particulars from that proposed two years ago. Further consideration and study raised in our minds serious doubt as to the constitutionality of the measure proposed two years ago. We have sought to eliminate constitutional objections in the new measure.

We propose continuous detention of the habitual criminal in very much the same manner as the insane and other defectives are



A. C. BACKUS

now detained. We believe that the state should establish a separate penal institution or colony for the detention of habitual criminals where they can be made self-supporting with the least possible punishment consistent with safe detention. With that in mind we recommend that investigation be made of the available islands in the border waters of the state with a view to determining whether an island may be obtained of such size and location that it may form a natural place of detention without prison walls or other artificial barriers and also furnish space for a great variety of activities under such circumstances as may impose the least punishment compatible with industry, detention and self-support. Such island should be accessible by boat at all times of the year and by boat only.

In practice it is believed that nearly all the complaints will be lodged against convicts who are already in penal institutions and who are believed to be habitual criminals, although provision is made for lodging complaint against any habitual criminal wherever found. During the term of any convict the prison officials, with existing aids and with the right in the prison officials to secure all data needed to identification and to discovery of past criminal record of the convict, can secure the evidence necessary for an intelligent examination and opinion respecting habit of criminality.

The question has arisen in our minds whether the proposed measure would in effect provide for placing any person twice in jeopardy for the same offense. We are of opinion, however, that it would not and that when one is tried for being an habitual criminal he is not put upon trial for a specific crime of any other character.

A BILL

*To create Sections 4522f, 4522g and 4522h of the statutes relating to habitual criminals.*

The people of the state of Wisconsin, represented in Senate and Assembly, do enact as follows:

Section 1. There are added to the statutes three sections to read:

Section 4522f. Any person who has been convicted within the United States, of two or more felonies or of five or more misdemeanors or of one felony and three or more misdemeanors, and who is reasonably certain if free from enforced restraint to commit further criminal offenses and whose continuance at large is seriously detrimental to the good order of society, is hereby declared to be an habitual criminal.

Section 4522g. The continuance of criminal habits and practices in such manner as shall constitute the person an habitual criminal, as defined in Section 4522r, is hereby declared to be a felony and may be

### JUVENILE OFFENDER

prosecuted in the same manner as are other felonies and any person convicted of being an habitual criminal shall be sentenced to permanent detention in the state prison of the state of Wisconsin at Waupun, Wisconsin, or in such other institution as may be provided thereof. If any person complained against as being an habitual criminal shall have had a fixed place of abode within this state throughout the year next before his last previous conviction, the county of such residence shall be the place of trial; but if such person have no such fixed place of abode within this state the prosecution may be maintained in any county of this state. The provisions of law respecting change of venue in criminal cases shall apply to such prosecution.

Section 4522h. All persons in detention, after conviction of being habitual criminals, shall be subject to parole by the state board of control, but shall become eligible to such parole only upon earning the right thereto by meritorious conduct in compliance with such rules as may be prescribed by said board. In the event that after a parole has been granted the person shall by meritorious conduct become, in the opinion of the state board of control, able to maintain himself as a law-abiding person out of restraint, said board, with the approval of the governor, shall have power to finally discharge such person from detention and custody.

## CHARLES GORING'S "THE ENGLISH CONVICT": A SYMPOSIUM.

### I. METHOD AND MOTIVE FROM THE PSYCHIATRIC VIEWPOINT.

[PURSUING THE PLAN ANNOUNCED IN OUR LAST ISSUE WE PRESENT IN THIS SYMPOSIUM CRITICISMS OF "THE ENGLISH CONVICT" BY SEVERAL AMERICAN STUDENTS OF CRIMINOLOGY. WE ARE UNDER OBLIGATION TO THOSE WHO HAVE SUPPLIED THESE ARTICLES AND ALSO TO THE AUTHORS OF THE PAPERS THAT APPEARED IN JULY UNDER THE ABOVE TITLE.—EDS.]

WILLIAM A. WHITE.<sup>1</sup>

In this exhaustive treatise we have one of the most comprehensive of recent efforts to deal with the problem of crime by a study of the criminal. This is a study of the convicted English prisoner, and has been carried out with the utmost pains and in the greatest detail. The program, as condensed in the table of contents, is indeed an extensive one. Part I deals with an inquiry into the alleged existence of a physical criminal type. Part II is divided into seven chapters, dealing with the physique, age, vital statistics, mental differentiation, influence of the force of circumstances, fertility of criminals and the influence of heredity on the genesis of crime.

To begin with, the characteristic feature of the book is set forth in the sub-title "A Statistical Study." The work is essentially statistical, and upon almost every page we meet tables, curves, diagrams and complicated mathematical formulæ. Why it is so can be easily understood when we read in the preface that Professor Karl Pearson's advice was sought and that the author visited the Biometrical Laboratory for the purpose of studying their methods. The whole work, then, is a statistical study carried out under the inspiration of the biometricians.

Nothing in the sciences that deal with human beings may be more delusive than the application of the statistical method. Certain groups of human beings, as in this instance "criminals," are studied by being measured in all sorts of possible ways, and the figures thus obtained are then treated as finalities and the process of mathematical juggling is begun, which brings out all sorts of results. Manifestly the results, as the outcome of this process, must depend upon what originally went into the formation of these figures. It is, therefore, of prime importance that the concepts upon which the author bases his study should have some examination.

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<sup>1</sup>Superintendent, Government Hospital for the Insane, Washington, D. C.

## METHOD AND MOTIVE

In the first place, it makes very little difference to start with what the author may conceive to be the meaning of the concept "criminal" so long as we know that the material is the material found in the English prison. If we understand the preface aright, these statistics were gathered by systematic statistical study of the convicted criminal without selection. Now while I, personally, am always suspicious of statistical studies, I am more than critical of a study based upon such material. I cannot possibly see how the convicted criminal can be dealt with as a unit—as if he consisted of homogeneous material. "Criminal," like "insane" and many other such terms, are broad concepts, in these two instances, solely legal concepts, and include a tremendous medley of all sorts and conditions of men. Take the more limited concept of "thief," for example. One man may steal under the influence of the prodromal stage of paresis who has been previously of high moral character; another man may steal under the excitement of a hypomanic attack; another may steal as a result of moral delinquency; another as a result of high-grade mental defect; another under the influence of alcoholic intoxication, and so forth and so on, and how by any possibility a grouping of these men together can give us any light upon the general concept "thief" is beyond my power to comprehend. The difficulty with all such methods of approach to scientific problems is that the approaches are not sufficiently controlled by dynamic concepts. Some group of individuals is given a name, and forthwith the name becomes a thing, and the thing has clear-cut, rigid limitations, and is so dealt with. I am aware that the author disclaims a concept of such rigidity and emphasizes the fact that the criminal, as he has worked him out, merges into the normal man. This, of course, is all right so far as it goes, but his actual treatment of the situation by statistical methods in the way in which he has done is a treatment which is based upon such rigidity of concepts.

A fundamentally dynamic viewpoint of human beings should enable one to see them as biological units in the last analysis, but not any too clearly differentiated even from their environment. It should enable one to see also an interplay of action and reaction between what at their focal points we term the individual and the environment. The failure to get this viewpoint is seen well on page 22 of the introduction, where the author undertakes to differentiate the words abnormal and unusual. He states here that the two words are not interchangeable as they might appear to be, but that there is a real and important difference which it is necessary to recognize; unusual mean-

ing rarity, whereas with the term abnormal the idea of unnaturalness and morbidity is connoted. Let me quote: "The unusual is always quite natural, and is the outcome of natural laws. Unusually tall people are quite rare, but their stature is part of natural growth, and is the outcome of the natural laws of growth. The abnormal on the other hand, is essentially morbid, and implies a condition of things against nature." I wonder if it is possible to find a more absolute distortion of viewpoint than this. This sentence absolutely smacks of medievalism, as if morbidity were something that invaded the human being from without, as if a difference in height up to a certain number of centimeters and fractions thereof were conditioned by natural laws, and as if a person exceed by a millimeter that average height the laws which controlled that excess of growth were laws outside of nature! This is a concept which, I must confess, is absolutely unacceptable to me, unless I project myself a thousand years in the past and think of the world and everything on it as natural, provided it be usual, and things that offend my eye or produce results which I do not approve as caused by some demon from outside the world who projects his power like the proverbial curse upon the afflicted mortal. It is as if a watch by the mere fact of having a broken main-spring becomes no longer a watch; as if a man who is sick becomes by that same token a monster no longer amenable to the laws of nature; as if the chemistry of the pancreatic secretions of a diseased pancreas must be a different chemistry from that of normal secretions; as if for the study of a disordered mind one must needs have a different psychology.

As to the author's conclusions as a result of the inquiry into the alleged existence of a physical criminal type, conducted at great length, and occupying practically one-half the book, his general conclusion is that there is no evidence which confirms the existence of such a type as Lombroso and his disciples described.

His conclusions as to the mental differentiation of the criminal is as follows: "Our final conclusion is that English criminals are selected by a physical condition, and a mental constitution which are independent of each other—and that the one significant physical association with criminality is a generally defective physique; and that the one vital mental constitutional factor in the etiology of crime is defective intelligence." Here we have a conclusion which is diametrically opposed to the whole trend of modern thought in the realm of psychiatry. The work of Adler on the explanation of the neurotic character and his work on organic defects indicates quite clearly that mental disorders, as exhibited in the neuroses particularly, and

## METHOD AND MOTIVE

probably also in the psychoses, are correlated, and perhaps, in his opinion, dependent upon defect in functioning of certain organs.

Dr. Goring, in his consideration of the mentality of the criminal, has practically nothing to say about the emotional side of mental life. He stresses the intellectual side. This, again, is a movement diametrically opposed to modern trends in psychiatry and psychopathology. I think I may say, without fear of serious contradiction, that we have learned that the affective side of mental life is of far greater importance as supplying motives for conduct than the intellectual side. With the recent development in the knowledge of the endocrinous glands and the sympathetic nervous system we have arrived at a position where we appreciate the existence of a physical basis for emotional expression which has to be taken into account in studying defective types of conduct based upon defective emotional reactions. The study of the material which Dr. Goring had at his disposal would undoubtedly have been illuminating from this organic viewpoint, and even with his statistical method he has indicated that his material was, on the whole, physically defective, a conclusion which is, perhaps, one of the most valuable in his book.

I have been emphasizing for a long time the necessity of a psychopathological approach to the problem of the criminal quite on all fours with the same approach to the problem of the so-called insane. Dr. Goring's approach to the problem is essentially anthropological, and although his book is filled with all kinds of valuable suggestions and interspersed with detailed information which comes from an immense storehouse of knowledge, based upon extensive experience, still I cannot but feel that the amount of effort that he has put upon the preparation of this work has been very largely taken up in "lost motion." We have learned in psychiatry long since that the outward act of an individual can never be taken at its face value, or at least can never be understood by considering it alone. A careful psychological dissection, so to speak, has to be carried out in order to determine the roots from which such conduct has sprung, and it is only by such dissection and such determination that conduct becomes understandable. To attempt to classify conduct upon the basis of the opinion of twelve jurymen, whose business it is to say whether the conduct of an individual is or is not capable of being squeezed into the limits defined by a specific statute is to confine one's observations to the most superficial aspects of the individual. Society has been doing this for hundreds of years. For scientific purposes such superficial glimpses are of little value. The identically same act, from a legal point of view, as I have already

indicated, may be committed by widely different individuals from widely different motives, and, therefore, have absolutely different explanations. The problem of the criminal must become more individualistic. We never learned anything about the so-called insane person as long as he was considered *en masse*, and we never learned very much about him until we studied him as an individual, and this will be the same way with the criminal. His make-up, physical and mental; his heritage, his individual history, his motives, and all the rest of it, must be carefully worked out in individual studies. We must look upon him with the calm discernment of the scientific eye for the purpose of endeavoring to determine the meaning of the phenomena in his particular case. Nothing can so effectively distort our ability to see clearly as does a moral critique that considers the criminal's act as sinful, and while, as a general thing, Dr. Goring's work is free from such manifest limitations, still, when he comes to discuss general principles, we find that they are all the time in the back of his head; for example, on page 21 of the introduction: "Now we do not deny that the law-breaker, by his anti-social acts, is sinful."

When the statistical method is brought in operation for the purpose of reaching scientific conclusions, it is necessary primarily to call in question the accuracy of the concepts with which the figures deal, for nothing can be taken out from one end of an equation which was not put in at the other. The trend of modern psychopathology is individualistic and essentially dynamic. From these standpoints the concepts dealt with by the author are distinctly defective.

As to the whole work, he has succeeded in demolishing the old idea of the born criminal, as set forth by Lombroso, but such a concept did not need demolishing. It has ceased to have much life for some time past. It is, however, gratifying that it has been demolished by a refinement of the same methods that called it into being. As for the rest—well, I cannot but express regret that such a stupendous amount of work and energy has been side-tracked into working over discarded ideas rather than utilized in dealing with the actual, pulsating, living problems of which there are so many. So much work might well have gone a considerable way toward illuminating these problems. In any event, one must bow acknowledgment to the author who has pursued the light as he saw it so diligently and for so long.

## II. THE SOCIOLOGIC PROBLEM.

H. D. NEWKIRK.<sup>1</sup>

In reading Goring's "The English Convict," one is at once impressed with the challenge which stands out prominently proclaiming the fact that in the study of the criminal and the causes which lead him to be such, the statistical method is absolutely the only reliable one and that this method is practically infallible. He is modest enough, however, to state that, should the reader not be convinced of the truth of his conclusions, the fault lies with the paucity of data and not with the method itself.

Certainly no one can deny the value of accurate and complete statistics as evidence in any problem. In this case the labor involved has been immense and the data has been collected from a fairly large number of cases, yet, as Dr. Goring himself frequently admits, the facts themselves are often incomplete and are filled in from the law of general averages. Again, in gathering statistics, one may leave out data which, seemingly unimportant, may in reality be the deciding factor in any given question; or he may so arrange his data that it is entirely possible to finally deduce conclusions which in reality are not warranted. Also, it is true that certain subjects are more suitable for statistical treatment than others. Tangible, definite things are certainly more suitable for statistical treatment than intangible and indefinite subjects. Thus, it should follow that, if certain subjects are more suitable than others for definite, mathematical measurement, there should be some other method or methods of attacking the remainder; some method equally valuable, or more so, because of its special fitness for use in the particular branch in question. Dr. Goring, however, waves aside any other method and holds the statistical to be equally efficacious in measuring human character and the visible prominences of the human form. We believe that it will take more evidence than Dr. Goring has or can gather to convince the public at large that in studying the criminal and, especially, the causes of his criminality only one method should be used, and all others held of no avail. The descriptive method has been of great service in the past and we believe will always continue to be in the future. This is especially true when considering the sociologic aspect of the present work, which phase only we are discussing at this time.

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<sup>1</sup>M. D.: Director of the Research Department, Hennepin Co., Juvenile Court, Minneapolis, Minn.



With chapter five, Dr. Goring begins more especially the sociologic phase of his subject and makes detailed investigation of the divisions of environment and heredity. By following his statistical method, he concludes that (page 288) "Crime in this country is only to a trifling extent (if any) the product of social inequality, of adverse environment, or of other manifestations of what may be comprehensively termed the 'force of circumstances.' "

This seems to us an exceedingly broad statement and one which should not be made without a full and complete knowledge of facts, for it is contrary to the accepted belief of many competent students; yet (p. 266) he states: "The environmental conditions possibly related to crime are so manifold and complicated, and may come into association in so great a variety of ways and degrees, that to disentangle satisfactorily the contributory effectiveness of each form and its relation to all others would lead to a long and complicated inquiry. Such a complete and final investigation of the matter is not possible within the limitations of the present records, whose analysis will hardly enable us to make more than a superficial survey of the subject."

In discussing this topic he subdivides environmental conditions arbitrarily and solely into (1) nationality, (2) education, (3) employment, (4) alcoholism, (5) influence of family life, (6) relation of the first conviction to a subsequent conviction of convicts, with several minor subdivisions, and by a process of cold figures, gathered in an uncertain way (partly from mentally deficient convicts), proceeds boldly to the above conclusions.

We are surprised to note the apparent lack of thoroughness Dr. Goring uses in his treatment of environment as a cause of criminality. His subdivisions of the subject are very limited and his data is not of large amount; also we consider that some of the most important factors which are usually considered prominent as causes, he has passed over entirely. In the matter of "Correlation of age of subject at death of mother with criminality (p. 281 and table 272), he bases all his conclusions on a series of only 278 cases. Such phases as divorce, drugs, gambling, bad literature, bad company and all the numerous possible contingencies which are understood by us all, as we may have come into close relationship with them as positive factors in the development of anti-social tendencies, have not been included at all in the discussion. Dr. Goring evidently loses sight of the fact that it is perfectly possible for some one element, which, in itself perfectly normal, yet when combined with others may, even in a normal-minded person, so exasperate and excite

## THE SOCIOLOGIC PROBLEM

his mind that criminal acts may result. Just as in Chemistry, one may have a combination of elements, perfectly harmless in themselves, yet when a single atom is added to it we may have a very destructive combination.

His conclusion (p. 287) that "adverse environment is related much more intimately to the intelligence of convicts than it is to the degree of their recidivism" seems hardly warranted, then, in view of the fact that his sources of data are so limited and the range of his investigation has been narrowed to such small proportions.

While we do not desire to discredit the statistical method, it would seem to us that there certainly should be a more rational and, indeed, a more exact method of studying this problem of environment. We believe that this phase of the subject is so intricate, it is bound up with so many unmeasurable elements that individual, analytical study will in the end yield far more satisfactory results.

Before discussing this subject further, let us note his conclusions in regard to heredity as a cause of criminality (p. 348): "They (the children) have inherited a certain grade of criminal diathesis; and although not today so designated, they will ultimately pass into the ranks of recognized criminals." Again (p. 353): "We see from these correlation coefficients that in their conviction and imprisonment for crime, sons tend to resemble their parents." Also (p. 372), in his final conclusion, speaking of feeble-mindedness, alcoholism, epilepsy, sexual profligacy, ungovernable temper, obstinacy of purpose and willful anti-social activity, Dr. Goring notes with emphasis, "every one of these, as well as feeble-mindedness, being heritable qualities."

Thus, he would lead us to infer that criminal tendencies or traits are directly inherited as such. This is also a statement of vast importance.

The controversy as to whether heredity or environment has the greater influence is old, but it takes on new importance in the study of the criminal. We are of the impression that the preponderance of opinion at the present time is that there is no such thing as direct inheritance of traits; that is, no direct transmission of traits through the germ plasm; but if Dr. Goring is quite certain that there is such a thing as direct inheritance of criminal traits, he must concede an inheritance of other mental traits. If a son inherits his father's tendency to steal or forge notes or pick safes, surely we would have sons inheriting tendencies towards mechanics, book-keeping and stenography. There is surely a difference between inheritance and repetition of acts by children. A son may become

a burglar or steal if his father did the same things, and indeed it is probable that he will do so; but this is far from saying that he inherited any part of his liking for these acts. We would rather say he had simply been stimulated by his natural environment to follow the path of least resistance. Also a son may become a mechanic or bookkeeper, following directly in the footsteps of his father, but this does not mean at all that there is any inheritance involved.

We believe that instead of direct inheritance of criminality or any other trait, the only thing that is passed on in this line is brain capacity. In other words, the father transmits to his son a latent force of brain energy, more or less complete, according as it has been vitiated by various factors, such as alcohol, venereal disease and other sources of dissipation, or improved by careful living and healthy mating. The brain energy may be used in whatever way the individual sees fit, but usually he follows the path of least resistance. So if a son is brought up in an atmosphere of theft and is trained to that moral level, sooner or later in his unequal struggle for existence, due to his lack of a positive moral education and failure to learn proper, honest methods of obtaining property, he will be likely to use his brain along the path of least resistance and follow the occupation of a criminal. But if you transplant at birth this same son and put him in a good home, where his body can have proper nourishment, so that he will not be forced to fight an unequal physical battle, and where he can have the benefit of a good moral training and the advantage of associating with healthy-minded, normal boys and men, will he then throw all this aside and choose a criminal career? Even though he should do this it would not be proof that he had directly inherited a special "criminal diathesis." It would be entirely possible that he had simply failed to inherit enough brain force to enable him to distinguish clearly between right and wrong, so that when he is under stress of circumstances he makes the wrong step. He might also continue in this wrong way for the same reason. Whatever element of heredity there is then may be along the line of quantity of brain capacity, rather than any special form of trait, be it criminal, mechanical or clerical.

This would seem a natural conclusion and has been tested in different ways. Children of normal mentality, living in localities where the parents have been farmers for generations, suddenly becoming orphans, have at an early age been transplanted to an entirely different environment, grown up and become professional men or mechanics. Likewise children of criminals, also being transplanted at an early age, provided their mentality is normal, have

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very frequently made good average citizens. If, however, they are mentally deficient, the chance that they will successfully resist the temptations which sooner or later come to all are much smaller.

The rational idea of the effect of environment and heredity on the making of the criminal is to us, then, not that there is a direct inheritance of criminal traits, but a direct inheritance of deficient brain capacity, and this, as a factor in crime, is effected to a very large extent by the "forces of circumstance."

In closing, we wish to state that we agree thoroughly with Dr. Goring that defective mentality is a prominent cause of criminality, but we would prefer to see it given a more prominent place than he assigns to it. We do not think a criminal diathesis, if there be such a thing, is inherited, but rather is it a question of transmission of general brain power; and we do believe that environment, with all its subtle influences, plays a powerful role in moulding this inherited brain capacity.

Our own study, particularly with juveniles, has been the main factor in bringing us to this conclusion.

### III. CRIMINAL ANTHROPOLOGY.

PAUL E. BOWERS.<sup>1</sup>

In using the term "criminals" Goring refers only to those anti-social individuals who have fallen into the meshes of the law and not to those who have been able to escape conviction and the legal penalty for their crimes.

The introduction to "the English Convict" contains a brief description of the origin and development of the three schools of criminology, the Classical School, the Correctionist School, and the Positive School. This chapter is chiefly devoted, however, to a vigorous and vicious attack on the Lombrosian philosophy of crime, and, while admitting that Lombroso was a philanthropist and humanitarian, he charges his work as being devoid of scientific spirit and "even dangerously marred by exaggeration and fallacy." He finally concludes that Lombroso's system will never be otherwise regarded than as the superstition of criminology.

In the second division of his introduction he states that the superstition of criminology is still dangerously alive and he therefore made a statistical survey of 4,000 English male convicts, and with the results of such study he has endeavored to repudiate the claims of the Positive School of Crime and to inaugurate and lay the foundation for the scientific study of the criminal.

Part I is an inquiry into the alleged existence of a physical criminal type. He here gives the results of detailed anthropological measurements of the head, eyes, ears, nose, lips, hair, right and left-handedness, etc., and then makes comparisons with similar measurements of college students, soldiers, and inmates of hospitals for the insane. His deduction from such data is that there is no physical criminal type.

Part II of his work is devoted to a most careful and minute study of the subjects indicated in the chapter titles.

#### PART II.

Chapter I.—The Physique of Criminals.

Chapter II.—Age as an Etiological Factor in Crime.

Chapter III.—The Criminal's Vital Statistics: Health, Disease, Mortality, Enumeration.

Chapter IV.—The Mental Differentiation of the Criminal.

Chapter V.—The Influence of the "Force of Circumstances."

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Chapter VI.—The Fertility of Criminals.

Chapter VII.—The Influence of "Heredity" on the Genesis of Crime.

Upon opening this volume one is immediately impressed with the profound and exhaustive character of this valuable contribution to criminology. The reader is also struck with the multitude of arithmetical and algebraic formulæ and it immediately becomes perfectly evident that Dr. Goring's study is purely a statistical one. The clinical and philosophical study of the criminal seems to have received much less attention than the statistical.

*Anthropology.—Heads*—Goring's measurements of heads lead him to the following conclusion: "It will be seen from examination of the differences recorded that in correlation there is no difference at all \* \* \* between criminals and university men."

It has been my observation that the heads of criminals when compared with persons living at liberty do not show a very marked difference in size—small heads and large heads have been observed with greater frequency among prisoners than are heads of medium size. Murderers seem to have, as a rule, larger heads than petty thieves—"a thief who is caught thieving has a smaller and narrower forehead than the man who arrests him." Asymmetry of the cranial vault is quite common and I believe it is more often seen in criminals than in equal numbers of civilians; these cranial anomalies, such as plagiocephaly, macrocephaly and microcephaly, are found among insane, epileptics and feeble-minded persons in about the same ratio.

*Ears*—I have noticed a great relative frequency of anomalous ears in the prisoners I have studied. The Morel ear is very common, as are the presence of Darwinian tubercles. I have noticed among negro criminals that the small shell ear is very common, but whether or not this is characteristic of the American negro I cannot say. Large ears, I believe, on the whole, are the more frequently observed among convicts.

*Eyes*—"It will be seen \* \* \* that fraudulent offenders have rather better, and thieves have rather worse, eyesight than offenders generally. The amount of this association, however, between the eyesight of criminals at constant age and the nature of their crime is very small, and for all practical purposes may be regarded as negligible."

Nothing particularly striking about the eyes has been noted except the great frequency of the arcus senilis and pupillary irregularities which indicate early degenerative morphological changes, the

results of luetic infection. About fifty per cent of the prisoners show at the time of their entrance examination some defect of vision. The defects can generally be classified under three heads: Congenital defect, such as myopia, astigmatism and hypermetropia; errors of refraction, due to acquired disease or traumatism; and various degrees of presbyopia, due to advance in years.

*Skin*—"Upon the evidence of the figures in the final table, offenders committing crimes of violence are, on the whole, rather less anaemic, and have a ruddier complexion, than criminals generally."

It has been a very popular practice of criminologists to refer to the anaemic and cachectic look of prisoners. While such conditions do exist in those prisons which lack an abundance of fresh air and sunshine, this pallor of the skin cannot be described as one belonging exclusively to criminals, for it is noted in those persons who are shut in from the air and sunshine by reason of their occupations.

I have noticed the irregular cardiac rhythm in many prisoners at the time of entrance. This condition is, no doubt, brought about by alcoholism, irregular hours of sleep, excitement and sexual excesses. The regime of prison life has a quieting influence on this functional tachycardia, as the prisoner is compelled to live a regular life, free from excitement and dissipation of all sorts.

*Left-handedness*—"Comparative statistics of left-handedness are remarkably few, and for Englishmen practically non-existent. \* \* \* Among 266,270 German recruits, 3.88 per cent. are left-handed—a proportion practically identical with our percentage of criminals with this peculiarity."

It has been the common assertion that large numbers of prisoners are left-handed, but I am of the opinion that this claim is somewhat of an exaggeration, though possibly the percentage of left-handedness is slightly higher among convicts than among free individuals.

*Nervous Sensibility*—I find that among a certain class of prisoners, such as hysterics and malingerers, there is a tendency to exaggeration of slight pain or any form of physical discomfort; this is especially noticeable among those who attempt to evade daily tasks and work assigned them. Indeed, the morning sick lines in penal institutions are full of prisoners pretending to be ill and furnishing only the most flimsy excuses for such claims. On the other hand, however, I have noticed an astonishing degree of sensory disturbances, especially those of anesthesia. I have performed many minor surgical operations on convicts without general or local anesthesia when no complaint was made of pain. In very severe injuries I have found

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it necessary to exercise authority under the threat of demerit to keep injured patients in bed. I have known prisoners to amputate their fingers in machinery without apparently suffering pain; these self-inflicted mutilations were usually done for the purpose of avoiding labor. In one instance it required twenty-seven deep and superficial stitches to close a gaping wound made across the shoulder and arm of a prisoner, by a sharp knife, while in a fight with a fellow convict; the severed ends of the muscles were sewn together and the edges of the skin approximated without the slightest sign of pain on the part of the patient.

I have observed that the genitalia of prisoners are usually very well developed, and the reason for this is very apparent, since most of them are given to very frequent intercourse.

"The sexual sense of the youthful criminal is usually intense, and previous to apprehension was gratified physiologically unless it was perverse or exaggerated, in which case onanism or pederasty were resorted to."

The life in penal institutions does not seem to suppress or diminish the genetic desires, and since the opportunities for physiological intercourse are lacking, inverse and perverse sexual habits are acquired in not a few instances. In those prisons where, for lack of room, it is necessary to put more than one prisoner in a cell, the practice of sodomy and other forms of homosexuality must be looked for.

*Tattooing*—"It is clear that the practice of tattooing cannot be such a peculiarly criminal characteristic as has been alleged."

The practice of tattooing is very common among prisoners, but it is more or less limited to the members of the lower strata of criminal society. The forger and the convicts of his type are not given to this mode of adornment, since it makes identification more easy and certain. Young criminals may in a spirit of bravado submit to this painful form of decoration to display their nerve and ability to endure pain.

I have found all portions of the body tattooed, even including the genital organs, but the most common location for these "cutaneous embellishments" is the inner surface of the forearm. All manner of figures are found and common among them are initials and names, religious symbols, crucifix, nude female figures, dancing girls, ships, stars, geometrical designs, obscene legends, birds, insects, dragons and designs for good luck, such as horseshoes, etc. One reason offered for this practice is that the tattoo marks prevented blood poison in case of injury, another that they bring good luck. Burglars recog-



nizing the dangerous character of their hazardous occupation have been tattooed for means of identification should they meet a violent death.

It is extremely gratifying, no doubt, to the disciples of Lombroso to have such a worthy opponent as Goring to declare:

"The thief, who is caught thieving, has a smaller head and a narrower forehead than the man who arrests him; but this is the case not because, of the two, he is more markedly inferior in stature. The incendiary is more emotionally unstable, more lacking in control, more refractory in conduct, and more dirty in habits, etc., than the thief; and the thief is more distinguished by the above peculiarities than the forger; and all criminals display these qualities to more marked extent than does the law-abiding public, not because any of these classes is more criminal than the other, but because of their inter-differentiation in general intelligence. From our statistical evidence, one assertion can be dogmatically made: It is, that the criminal is differentiated by inferior stature, by defective intelligence, and, to some extent, by his anti-social proclivities. The following figures, however, may assist the imagination in realizing the nature and proportions of this differentiation. We may take it that one in thirteen persons of the general population are convicted at some time of life for indictable offences. If the total adult population were made to file by in groups of thirteen, and out of each group one person was selected who happened to be the smallest there in stature, or the most defective in intelligence, or who possessed volitional anti-social proclivities to a more marked degree than his fellows in the group, the band of individuals resulting from this selection would—in physical, mental and moral constitution—approximate more closely to our criminal population than the residue. We find, also, that crimes of violence are associated with the finer development, with the more marked degrees of ungovernable temper, obstinacy of purpose and inebriety, and with the greater amount of insane and suicidal proclivity, of persons convicted of these offences; and that tall persons are relatively immune from conviction of rape; and that fraudulent offenders are relatively free from the constitutional determinants which appear to conduce to other forms of crime."

Goring's statement relative to the influence of prison life upon prisoners is indeed interesting.

"We find that imprisonment, on the whole, has no apparent effect upon physique, as measured by body weight, or upon mentality, as measured by intelligence; and that mortality from accidental negligence is pronouncedly diminished, and the prevalency of infectious fevers due to defective sanitation—taking enteric as a type—is lessened by prison environment. On the other hand, mortality from suicide, and from conditions involving major

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surgical interference among prisoners, greatly exceeds the general population standard; while, with regard to the prevalence of, and mortality from, tuberculosis in English prisons, criminals may be regarded as a random sample of the general population—one-fourth to one-fifth of all death in the general population, as well as amongst prisoners, being due to some form of tubercular disease."

While these conclusions are in the main to be agreed with, I do not believe they can be accepted in their entirety. Under the regime of prison life, with its healthful food, daily wholesome employment, regular hours for sleep, medical care, we find that many prisoners, who were on the verge of mental and physical breakdowns at the time of admission, owing to their vicious habits of intoxication, prostitution and drug ingestion, are restored to health.

As to tuberculosis, this is the *bete noire* of the prison physician. Often our penal institutions are censured to an undue degree because of the spread of tuberculosis. Many cases of lung disease, no doubt, develop in prisons, but it is a regrettable fact that men are committed to prisons in the advanced stage of tuberculosis. As an illustration of this condition of affairs, one man died of pulmonary tuberculosis two days after being admitted to the Indiana State Prison. The fact bears testimony to an obvious fault of our legal system, which too much considers the crime and disregards the individual.

The total number of deaths occurring in the Indiana State Prison during the decade beginning July 1st, 1902, and ending June 30th, 1912, were 140. Tubercular infection was responsible for at least forty-five of these deaths.

*Conclusion*—It will only be by such laborious efforts as Goring's that the true worth and function of anthropology will become known to the criminological science. The result of his labor will further stimulate the efforts of criminologists to determine whether the "abnormalities," "unusual conditions" or "anomalies" found in criminals are of such a character as to be remedied.

Goring's statements concerning the superstition of the Lombrosian idea seem at times to be somewhat embarrassed by the facts he has presented and the conclusions he has drawn. When he declares (1) that the criminal is mentally and physically defective; (2) that environment bears but an insignificant causal relationship to crime; (3) that criminalistic traits are inheritary in the same manner as is tuberculosis; (4) that classes of criminals may be differentiated one from another by physical and mental attributes, he becomes the defender of the Lombrosian doctrine concerning the criminal.

## MARRIAGE, STERILIZATION AND COMMITMENT LAWS AIMED AT DECREASING MENTAL DEFICIENCY.

JESSIE SPAULDING SMITH.<sup>1</sup>

During the last decade there has been a growing interest among all intelligent people in the problem of moral and social reform. Foundations have been established, social settlements endowed and societies of various kinds formed for the improvement of conditions among the human race. Women's clubs have conducted organized philanthropy. Psychologists have brought their best thought to bear upon the subject, and other educators have come to regard the solution of this problem, even in a very small part, as their most pressing duty.

As one result of this activity there have been gathered statistics regarding the number and condition of the mentally deficient, and others socially unfit, that are truly appalling. This does not mean that the number of persons mentally and physically diseased is necessarily greater than formerly, but it does mean that there is greater intelligence respecting such conditions. In the light of what Miss Addams calls a new conscience, people are seeking a remedy for these evils. There are indications of a willingness to seek a lessening of physical, mental and moral deficiency through the prohibition of unfit marriages, and the commitment and proper care of the defectives. A strong moral sentiment already exists against the marriage of persons tainted with insanity, epilepsy and venereal diseases. At the meeting of the first International Eugenics Congress in London, July, 1912, there was much discussion of this aspect of the problem. It was urged to check the transmission of criminal tendencies, stop immorality, and stamp out degeneracy by preventing the reproduction of the unfit and by forbidding marriages of the mentally deficient.

It is immediately evident that to accomplish this there must be suitable legislation. Moral sentiment alone affects only certain classes, and the psychology of the masses makes legal provision necessary. This has already been done to a certain extent in both the United States and Europe, and a brief survey of these laws may help us to get a comprehensive view of the conditions and a realization of the need of regulation.

At present thirty of the United States, including territories and the District of Columbia, have restrictive marriage laws of some sort. Twenty-two of these simply declare voidable marriage of insane per-

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sons or of idiots. In several of the states there is a general statement to the effect that marriage of those physically incapable or having a want of understanding may be declared voidable. The remaining eight states have definite legislation restricting the marriage of the unfit of various classes. The reason for the prohibition is usually a legal one: namely, that marriage is a contract, and that the affected person is incapable of making a contract. However, in a number of cases the prohibition is apparently made primarily on eugenical grounds—for the purpose of cutting off the bad germplasm—to diminish the number of children who will eventually need state aid.

The first step in this direction was taken in Michigan in 1899, when a law was passed providing that no person afflicted with certain venereal diseases and not cured of the same is capable of contracting marriage. This was followed in 1905 by another, which reads as follows: "No person who has been confined in any public institution or asylum as an epileptic, feeble-minded, imbecile, or insane patient is capable of contracting marriage, unless, before the issuance by the county clerk of the license to marry, there be filed in the office of the clerk a verified certificate, from two regularly licensed physicians of the state, that such person has been completely cured, and that there is no probability that such person will transmit any such disease or defect."

This law is weak in two respects. It does not include patients in private institutions, and it makes it possible for persons who are only apparently cured to marry. Cure of certain venereal diseases is never sure, and persons who have been affected with these should be forbidden to marry. However, there are some very excellent points in this law, which unfortunately has never been fairly enforced.

A law passed in Kansas in 1903 prohibits the marriage of an epileptic, imbecile, feeble-minded, or insane person, unless the woman be over forty-five years of age.

In 1904 the states of New Jersey and Ohio amended their marriage laws, making certain restrictions. That of the former state is almost exactly like the Michigan law, which has already been quoted. The Ohio law states: "No license shall be granted where either party is an habitual drunkard, epileptic, imbecile, or insane person; or who at time of making application is under the influence of liquor or drugs." This is the first regulation of the marriage of drunkards, but it has never been rigidly enforced.

The marriage law which has perhaps attracted the greatest attention throughout the United States is that of Indiana, passed in 1905. This act, which is made up of three laws, combines the good points of

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the Ohio and Michigan legislation and also introduces others. The first is a law forbidding the marriage of the mentally deficient, persons having transmissible diseases, and habitual drunkards; the second requires a health certificate of all persons who have been released from institutions; and the third declares void all marriages contracted in another state in an effort to avoid the Indiana law. Because of its many excellent features it may be well to quote this act in full or nearly so:

"There shall be uniform marriage licenses throughout the state. Licenses may not be issued in the following cases:

1. When either party is imbecile, epileptic, of unsound mind, or under the guardianship of a person of unsound mind.

2. To a male person who has been in any county asylum or home for indigent persons, unless it can be shown that the cause of such conditions has been removed, and that the man is able to support a family and is likely to continue so.

3. If either party is afflicted with a transmissible disease, or at time of making application is under the influence of intoxicating liquor or narcotic drug.

This law provides for a hearing before a circuit judge, and his finding is final.

This law declares void all marriages contracted in another state by citizens of Indiana who merely wish to escape the provisions of this law."

This latter provision has been maintained by the Supreme Court of the state of Indiana, but it has not yet been tested in the United States courts.

The Chilton Act, recently enacted in Minnesota, restricts the marriage of unfit persons, but there are no records of its having been enforced as yet.

During the year 1913 two more states, Pennsylvania and Wisconsin, passed laws restricting the issuance of marriage licenses. The Pennsylvania act is very much like that of Indiana. That of Wisconsin requires the physical examination of males before marriage, prohibits the marriage of first cousins, and restricts very materially the authority of any official to issue special dispensations for marriage without the lapse of five days from the date of receiving the license. Efforts to enforce the first part of this law have met with great difficulty in that many physicians have refused to make such examinations. The Milwaukee County Medical Society in a meeting of December 15, 1913, voted to refuse to make the examinations and issue the certificates required by the law. A committee was also appointed to take up the matter with the proper authorities and try to convince them that such a law is absurd. It is to be hoped that

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they will not succeed in their efforts to persuade the present legislature to repeal the law.

Much interest has been manifested in the legislation attempted in California during the last session of the legislature. Five so-called marriage bills were introduced, of which one, Assembly Bill 1126, was passed by both houses, but failed to receive the signature of Governor Johnson. This bill required a health certificate of every applicant for a marriage license; forbade the marriage of persons afflicted with certain venereal diseases; and provided for a division of marriage and child welfare in the bureau of vital statistics. This bill was championed by many earnest workers of the state, while many others feel that it would have proven inadequate if it had been approved. It is true that it made no provision against the marriage of persons who have been afflicted with certain diseases, such as gonorrhoea, and apparently have been cured; and no provision against the marriage of citizens of California in other states in an effort to avoid the California law. There undoubtedly will be further legislation upon the subject in this state in the near future.

There is also great need for legislation along other lines to provide for a better posterity. Unfortunately there is procreation among certain classes without marriage. At present less than half of the mentally deficient are confined in institutions, hence many are allowed to reproduce their kind. These in their turn become a drain upon society. It has been observed that two feeble-minded people never produce a normal child, and when one parent is deficient the tendency is toward deficiency in the children. As these people are very prolific the danger is easily recognized. To correct this, two remedies are suggested, asexualization and the establishing of more institutions for the care and training of these feeble-minded people.

Sterilization, which is advocated by many, has for its object the prevention of criminal heredity and the inheritance of feeble-mindedness, epilepsy, etc.; the prevention of rape and the punishment of rapists; and the benefit of the sexually perverted. It can now be done by a simple operation, which in most cases is followed by good results, and eight states now have laws requiring the sterilization of criminals, idiots, and moral imbeciles. The law passed in Indiana in 1907 is typical. It provides for compulsory sterilization of criminals, idiots, and imbeciles under certain circumstances and safeguards. This act is based upon the principle that heredity plays a most important part in the transmission of crime, idiocy, and imbecility. No operation may be performed except under the advice of skilled physicians and surgeons, and only in cases that have been pronounced

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unimprovable by experts. The law permits of any method of sterilization known to science.

Connecticut, California and Washington passed similar laws in 1909; Nevada, Iowa and New Jersey in 1911, and New York, Michigan, Kansas, Wisconsin and North Dakota in 1912-1913. Of these twelve states only two have enforced the law, namely, Indiana and California. In the former about two hundred operations have been performed, but the enforcement of the law has been suspended now, because the governor of the state believes it to be unconstitutional. In California some three hundred operations have been performed, and many good results have been noted. At the last session of the legislature the law of 1909 was repealed and another, Chapter 363 of the statutes of 1913, was enacted to take its place. Under this law any person who has been lawfully committed to any state hospital for the insane or to the Sonoma State home may be sterilized with or without his own consent. It also provides for the sterilization of criminals, especially rapists and sexual perverts, in the prisons of the state. The last provision is for the asexualization of any idiot under the direction of the medical superintendent of any state hospital with the consent of his parent or guardian.

As these laws apply mainly to the inmates of state homes and hospitals, it is important to see what provisions are made for the commitment to such institutions. In practically all of the United States there are laws requiring that the insane be committed upon complaint of members of the community in which they live, but few provisions are made for the care of the feeble-minded. There are no laws on record under which a feeble-minded child can be committed without the consent of his parents unless they be declared incapable, and another person is appointed the legal guardian of the child.

At present there are but forty-two institutions for the feeble-minded in the United States. However, there are in these many who could engage in some useful occupation outside under intelligent direction if it were not for the danger of reproduction. This would leave room for the training of those who now cannot be accommodated. It will thus be seen that both sterilization and segregation are necessary. The expense of maintaining such an institution need not be great if it is rightly managed. All of the inmates who are capable of receiving any training should be instructed along lines which will be useful in caring for themselves and those of lower grade mentality. If a farm and many of the simpler industries are conducted, the institution may be self-supporting or nearly so.

From what has been said it is very evident that there is great

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need for uniform marriage, sterilization and commitment laws in the United States. Our dual system of government makes the enforcing of the present laws difficult, for each state is bound to respect the laws of others. Even when there is provision against the marriage of citizens of one state in another for the purpose of evading the law of the home state it is not always possible to prove that there is the intention to evade the law. Another difficulty presents itself in those states contiguous to Canada and Mexico. Washington has recently repealed a marriage law, because it could not be enforced. Persons wishing to evade it went to Canada for marriage. The same conditions are true in Michigan.

As the population of the United States is mainly of European origin, and the greater number of our immigrants are from the European countries, the conditions in Europe are quite as interesting to us as those of our own country. The increased immigration that is expected with the opening of the Panama Canal makes it still more important.

In England there is about the same proportion of institutions as in the United States, and the new Feeble-minded Act provides more strictly for the commitment of the unfit to institutions. This law also makes it a misdemeanor for defectives to marry. We find laws for the betterment of the race quite general in northern Europe, but there are practically none in the southern part of the continent. There are marriage restrictions in Germany, Scandinavia, Denmark, Holland, and France. Two countries, Germany and Sweden, require the reporting of venereal diseases, because of their prevalence among the soldiers of their great armies.

In spite of the great strides that have been taken, there has been a great failure of the present legislation to accomplish the looked for results. For this there are two reasons—the fact that there is procreation without marriage, and the existing public sentiment against sterilization. Both of these can be remedied only through public education.

In this connection it is very significant to note that there is a demand among churches for reform along these lines. There is a recent ruling of the Cathedral of SS. Peter and Paul in Chicago calling for a certificate of health and purity for those who wish to marry. The English Church has taken similar action. This is significant in that it indicates an effort to enforce a moral law without legal provision. Such sentiment may finally lead to ideal legislation upon the subject.

The ideal legislation of the future will undoubtedly make the



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following provisions. It will require physicians to report all cases of venereal disease, epilepsy, feeble-mindedness, insanity, tuberculosis, mania for drugs or habitual drunkenness, and congenital blindness or deafmutism. It will require a health certificate from every person who applies for a marriage license, and it will forbid marriage between persons afflicted with any of the above diseases. Power to enforce these laws will be given to the proper authorities, and the penalty for the violation of them will be sufficiently heavy to insure respect for them. In the future better and more extensive provision will be made for the epileptics and the feeble-minded in institutions. There should be separate colonies for the epileptics, the high grade imbeciles and morons, and the low grade imbeciles and idiots. Commitment to these institutions will be made by the court upon the complaint of three persons and the examination of two competent physicians, as well as upon application of the parents or guardian of the defective individual. An effort will be made to cure or improve the condition of the epileptics, and the high grade feeble-minded will be trained for some useful work, but none will be dismissed from the institutions uncured without first being sterilized. All idiots and all imbeciles of low or medium grade will be sterilized, whether they are confined in institutions or not. These suggestions, though radical, are not impractical, and they point definitely toward radical improvement.

No one with any regard for social improvement desires to see the state of marriage unnecessarily fenced around with legal impediments, or wishes to infringe upon the personal rights of any individual. He simply asks that the matter be scientifically regarded. Society has been awakened to the fact that it is responsible for its own sins. We are rapidly coming to the realization that it is not only our right, but our duty to protect the future from the evil of the past and the present.

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## THE FORENSIC PHASE OF LITIGIOUS PARANOIA

BERNARD GLUECK.<sup>1</sup>

Maudsley has long ago said "It would certainly be vastly convenient and would save a world of trouble if it were possible to draw a hard and fast line and to declare that all persons who were on one side of it must be sane and all persons who were on the other side of it must be insane. But a very little consideration will show how vain it is to attempt to make such a division. That nature makes no leaps, but passes from one complexion to its opposite by a gradation so gentle that one shades imperceptibly into another and no one can fix positively the point of transition, is a sufficiently trite observation. Nowhere is this more true than in respect of sanity and insanity; it is unavoidable, therefore, that doubts, disputes and perplexities should arise in dealing with particular cases."

No small amount of the disrepute into which expert medical testimony has fallen is due precisely to a failure on the part of the legal profession to appreciate these truisms. To the legal mind the transition from mental well being to mental disease is exemplified by that wholly artificial, and to the psychiatrist's mind, subsidiary question of legal certification. The lawyer takes no cognizance of the conditions necessitating this change; he only concerns himself with the delimiting frontier, viz., certification. To him the insane has become such through the filling out and signing of certain papers and through having submitted himself to a certain prescribed legal procedure. The physician, on the other hand, because of his peculiar relationship to the patient, and as a result of his particular training, looks upon this legal procedure as a necessary evil and merely as typifying the conventional mode by which society settles its accounts with its diseased members. Our legal brethren fail to appreciate, furthermore, the fact that an individual may be very seriously ill mentally and urgently require hospital treatment, without, however, showing those gross disorders of conduct which go to make up the legal evidence and diagnosis of insanity. Neither do they seem to recognize the possibility of a seriously unbalanced individual making quite a normal impression, at any rate before a jury of laymen at the time of his appearance in court. Nowhere in psychiatry is this so apt to be the case as in that form of mental disease known as paranoia. Here we are dealing with a diseased

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personality which in many respects still approaches and resembles normal man.

The paranoiac, while he may harbor the most intricate and well-organized system of delusions, still remains approachable to us, and intellectually may be not only on a par with the average normal individual, but not infrequently gives the impression of being his superior. Nevertheless, this usually well endowed human being at a certain point in his career goes off at a tangent and spends the rest of his life in the pursuit of a phantom. The paranoiac, starting out with vague, ill-defined ideas, succeeds in elaborating, step by step, a well-organized system of thought, of ideas which finally assume an all importance in the conduct of his life and remain unshakable.

Kraepelin defines this condition as a mental disorder which is essentially characterized by a gradual and systematic evolution of a well-organized and intricate system of persecutory and grandiose delusions. It is chronic and incurable in its course and does not lead to any appreciable deterioration in the intellectual sphere. The litigious form of this disorder is particularly characterized by a persistent and unyielding tendency toward litigious pursuits. It is for this reason that this form of paranoia is of particular interest forensically. The law is the tool with which these individuals work and the courts their battle grounds. The least provocation suffices to start the stone rolling, launching the unfortunate upon a career of endless litigations. As a rule the disorder originates in connection with some adverse court decision or order of the authorities, which the patient considers an unjust one. Whether injustice has actually been suffered by the patient matters not and remains absolutely of no consequence so far as the course of the disease is concerned. The paranoiac litigant is unable to see the law as others see it, and in this respect he does not differ greatly from primitive man, whose conception of legality is that of a collection of concessions for himself and prohibitions for others. To be sure, a tendency to excessive litigation is occasionally met with in what appear to be normal people. Such pursuits, however, become pathological when they are based upon a delusional interpretation of actual occurrences or upon actual delusions, and are not amenable to reason.

According to Tanzi, the theme underlying the delusional system of litigious paranoiacs is avarice, and the whole may be looked upon as the slow and permanent triumph of a preconception. "The paranoiacal preconception gradually conquers all evidence to the contrary, and in spite of reality, public opinion and common sense, it becomes organized into a co-ordinated system of errors which become the tyrants of the in-

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tellectual personality and remove it by degrees outside the bounds of normality." The litigant constantly busies himself with his grievances, loses all interest in everything else and begins to fight for his rights. He stops at no means and is the bane of judges and court officials. He has to be, of course, refused all aid, either because he is unjust or because the courts find no remedy for his troubles. He refuses to settle actual grievances, carries the case from one court to another and finally develops an insatiable desire to fight to the bitter end. The statutes appear to him inadequate and even the fundamental principles of the law fail him. He cannot abide by the ultimate decision after all the usual means of justice have been exhausted. In his attempts to gain justice, he writes to magistrates, legislators and various other people in prominence. It is only after years of persistent misfortune both to himself and the objects of his delusions, which only serve to harden him against his fortunate opponents, his incapable lawyers, the corrupt judges and his ignorant and craven-hearted relatives, that this master of procedure is betrayed into the expression of threats or the commitment of some other offense which conveys him summarily from the civil to the criminal courts, and the unrepentant pursuer becomes the defendant, unless, indeed, the insane asylum has become his refuge (Tanzi).

This is precisely what happened with the patients whose histories are here recorded. With all this the paranoiac remains plausible, converses rationally and coherently, shows himself to be exceedingly well informed on current events, amazes his listeners with his really wonderful memory and his ability to quote *ad infinitum* from law books and statutes. Absence of hallucinations is the rule. Memory and the capacity to acquire new knowledge remain intact, and reasoning and judgment on matters of every-day life which do not touch his more or less circumscribed delusional field may remain quite normal. In short, he shows none of those tangible signs and symptoms upon which we must so frequently rely in our efforts to convince a jury of laymen of the existence of mental disorder. It is only when we take into consideration the entire life history of a paranoiac, which unfortunately is frequently ruled out as hearsay evidence, that the real state of affairs becomes manifest. We then see that where it concerns his delusional field the paranoiac's judgment is formed not as a result of observation or logic and reasoning, but as a result of an emotion, a mere feeling that this or that proposition is true. In every adverse decision of the court he sees a deep laid conspiracy to deprive him of his rights. His lawyers are incompetent or in collusion with his persecutors; the judge is corrupt or ignorant of the law, and the legislators negligent in

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their duties in not writing into the statutes laws which would take care of his grievance. He constantly harps upon what he calls "the principle of the thing," losing, gradually, all concern in the real issues involved.

Indeed, in watching the amount of attention a paranoiac bestows upon his grievances, the zest with which he takes up every newly discovered flaw in the law, and the dexterity with which he weaves it into the maze of his delusional system, the idea forces itself upon one's mind that what the paranoiac least desires is a settlement of his grievances. One can readily imagine the void in the unfortunate's life were he to be deprived of this all engrossing and to him really life-giving *casus belli*. Thus, not infrequently when one grievance is actually settled, another soon appears and assumes the centre of the stage. The means these individuals use in their efforts to convince the authorities of the righteousness of their cause or of the genuineness of the persecutions to which they are subjected are really amazing in their ingenuity. They are supported to a considerable extent by retrospective falsifications of memory, and when occasion arises, by a conscious distortion of facts, and prevarication, a point very justly emphasized by Bischoff. This author relates a case of a paranoiac woman who was in litigation with her father over some trifling inheritance left by her mother, and who accused her father of a murder, and insinuated that she had heard her grandfather call her father a fratricide. The reputation and character of the objects of their delusions are unsparingly attacked by the paranoiac litigant, and this not infrequently results in bringing matters to a head, where as defendant in a criminal suit for libel the paranoiac is recognized in his true light and sent to a hospital for the insane. Before, however, this final scene in the litigious career is enacted, especially where the persecuted has turned persecutor, the objects of his delusions have not infrequently suffered an untold amount of anguish and financial ruin, through having been obliged to play the part of defendants in civil suits based on nothing else but the distorted fancy of a diseased mind.

While one may readily detect the part played by avarice in the pursuits and activities of these individuals, it requires close contact with them, especially in the capacity of one who stands between them and freedom, in order to fully appreciate the degree of malevolence which they frequently exhibit. Indeed, the study of litigious paranoiacs more than anything else illustrates how much method there may really be in madness. Were an alleged lunatic standing as a defendant in a criminal suit to use one-tenth the amount of ingenuity and conscious direction of his symptoms that the average paranoiac uses, he would

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furnish the champions of the idea of malingering of mental diseases with enough material to convict a dozen lunatics.

The chief aim of this paper is to illustrate by means of two interesting case histories the forensic importance of this form of mental disorder. It is not intended, however, to enter here into an academic discussion of the problem of paranoia. The term "paranoia" is even pre-Hippocratic, and any attempt to indicate, even in the briefest manner, the changes which this concept has undergone throughout the ages would lead us considerably beyond the time limit at our disposal. I shall, therefore, merely mention that in reviewing the history of paranoia one is unmistakably struck by the fact that those viewpoints and ideas concerning this subject which have indelibly impressed themselves upon it occupy themselves with a study of the personality of the paranoiac rather than with the disease picture as such. Some of the investigators have gone so far as to maintain that paranoia is not a disease at all in the sense that typhoid fever is a disease or pneumonia is a disease, but that the paranoiac picture is rather the expression of an anomalous individuality and, as one author puts it, it is the evolution of a crooked stick. Sander recognizes this when he so admirably stated that the abnormal condition develops and unfolds itself in the same way that the normal mind unfolds itself in the normal individual.

The cases herein reported have been under my observation now for several years at the Government Hospital for the Insane, and I am indebted for permission to publish them to Dr. William A. White, superintendent of the hospital.

X— is a white man, aged 64 on his first admission to the Government Hospital for the Insane, July 9, 1907. This commitment was the direct outcome of a trial for perjury which took place in May, 1908, in the Supreme Court of the District of Columbia, at which the patient was found guilty. While awaiting sentence he was adjudged insane and sent to this hospital. The evidence brought out at this trial is remarkable in many respects and forms what some lawyers have termed "the romance of the law." This evidence was gathered from the reports of the Maryland Court of Appeals, dating as far back as 1874, and forms only an incomplete account of the patient's legal activities, inasmuch as many of his law transactions never reached the higher courts and consequently are not reported. In setting aside 1,296 magistrates' judgments obtained by the patient and amounting in the aggregate to \$127,836 debt and \$2,348 costs, the court states, among other things, as follows:

"The gross iniquity of this whole transaction, manifest enough upon its face, is abundantly so by the proof. The inference is irresist-

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ible that the magistrate who issued these judgments merely wrote them out on his docket without summoning witnesses and without the semblance even of an *ex parte* trial."

It was further brought out at the perjury trial in 1906 that in 1877 the patient had obtained 619 judgments against the A. E. Company, aggregating approximately \$50,000. These were likewise set aside by the higher court. We thus see that as far back as 1874 this king of litigants had already had set aside by the higher courts as many as some 1,900 distinct and separate judgments. How many more of these based on the same flimsy tissue of his distorted imagination he actually realized on is not known. As far as can be ascertained, the issue of insanity was never raised, at any rate by the court, prior to the perjury trial, and it was only when this master litigant, after having been active as a complainant for a great number of years, at last betrayed himself into committing a criminal offense that the issue of insanity was brought up.

A prominent Maryland judge, who had known X— for over forty years, had the following to say concerning him: "I have known X— for forty years, and he is a general nuisance and menace; he is crazy on getting money, and for years has been manufacturing bogus judgments against citizens of this and Montgomery counties and the A. E. Company. At one time he held judgments against that company for a million dollars for an imaginary wrong, all of which were eventually gotten rid of on the ground that they were fraudulent. He also in some fraudulent way obtained judgments against our county commissioners without their knowledge, for \$1,500,000, which were impounded by Judge M— of the United States Court at B—, where as a then non-resident he brought suit to recover on them. He then went down to Dickinson county, a remote section of southwestern Virginia, and obtained another judgment for some four or five million dollars against the county and various citizens, which were obtained by perjury and forgery. They were eventually set aside. His brother died in 1907, and I became one of the sureties on the executor's bond; last year a judgment turned up here against the executor and his sureties for \$17,000, which purported to be given by the Circuit Court for said D— county. It was a forgery all the way through; even the seal of the court to the certificate was a forgery. I wrote the judge of the court and he answered very promptly, stating that no such suit had ever been entered and that the judgment was a myth. We succeeded in impounding this judgment. No one up here feels safe when X— is at large. We have had a great deal of trouble and expense in trying

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to protect ourselves against him, and everybody regards him as being not only insane but also a very dangerous man."

On admission to the Government Hospital for the Insane July 9, 1907, he was found to be a fairly well preserved man for his age, entered freely into conversation, comprehending readily what was said to him and exhibiting no difficulty in elaborating his ideas. He talked in a slow, deliberate and rather mysterious manner and a low tone of voice. The family history as given by him was negative. He himself had the usual diseases of childhood, but, aside from chronic indigestion, had had no severe illness. He gave his occupation as that of a physician. In 1862 he enlisted in the Union army as a nurse and was discharged six months later; he states that in 1865 he graduated in medicine from the University of Maryland, which profession he practiced at W— until 1881; he then moved to Ohio because, he says, he could endure no longer the persecution of a good many enemies which he had made on account of his service in the Union army. In Ohio he states he engaged in the manufacture of proprietary medicines and claims to have sold out his business some time later for \$50,000.

Some idea of the patient's daily conduct may be had from the statements of his landlady, with whom he lived for a considerable time. It seems that he occupied a room on the top floor, which he would allow no one to enter. If anyone rapped on the door he would open it very slightly and cautiously, conducting the conversation through a crack in the door. He led the life of a hermit, living in absolute seclusion, cooking his own meals in his room. After he was removed to the hospital this room was entered and newspapers were found piled as high as the ceiling; many of the articles in them were underscored, and numerous clippings were pasted on doors and windows, as well as on walls; everything was covered with dirt and dust, and the cooking utensils were strewn all over the room. This lady said that during his stay there he was always very suspicious, kept the blinds drawn, and seemed to be constantly afraid that something was going to happen.

Examination of the patient soon after admission revealed a well-organized and very extensive delusional system, which, according to his story, apparently had its inception during the Civil War. It seems he had caused the apprehension and execution of a Confederate spy, and ever since then, he states, the relatives and friends of this man have been persecuting him. In 1889 he was granted a pension of \$25 a month, but he did not think this was a fair deal inasmuch as he was not a nurse, but a physician, and should at least receive a hundred dollars per month. He states that he came originally to Washington to have this matter straightened out, but on account of his enemies was



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unsuccessful. His worst persecutions he believes to have been instigated by the A. E. Company because he had judgment against this company for about \$50,000. He states that this was obtained in a damage suit which he brought against this company because they wanted to charge him expressage of something like 40c on a prepaid package. Following this damage suit, the express company's agents, especially certain members of the R. family, have been spying upon him and persecuting him; he finally sued a member of this R. family and says he obtained judgment against them in the Circuit Court in Virginia for \$9,000. When asked to explain how he figures out these exact amounts of damage, he is ready with a thousand plausible reasons just why the amounts were as he gives them. He was finally charged with perjury, found guilty, and while awaiting sentence was adjudged by a jury to be of unsound mind and sent to the Government Hospital for the Insane. He believes that members of this R. family were behind this because they were afraid that the patient would collect on his judgments, which by this time amounted to some \$20,000 and which, as he puts it, "were good, valid and subsisting, not reversed or otherwise vacated."

During his sojourn at the Government Hospital for the Insane he was always very suspicious and seclusive, keeping to his room practically all the time and aloof from the other patients on the ward. He adhered very tenaciously to his delusional system and believed himself fully justified in all his litigious pursuits. With all this he was clear and coherent in conversation, his memory was quite well preserved, and he had no difficulty in keeping himself fully informed of current events. Aside from the very evident caution and very profound suspicious attitude which he manifested during a conversation, he made no abnormal impression.

In October, 1908, he was paroled by a Justice of the District of Columbia Supreme Court to his brother's care in Ohio; the patient's reasons for this parole are interesting: He states he was told by the District Attorney that he would be paroled if he were to go to Ohio and vote for President Taft. This he says he did, after which he believed to have carried out the terms of his parole, promptly returned to Washington and resumed his former activities. The first thing he did on his return was to have the following two bills introduced in Congress, both of which are based wholly upon his delusional ideas:

"H. R. Bill xxxx, January 11, 1910. Mr. A. introduced the following bill, which was referred to the Committee on Military Affairs and returned to be printed: A bill to correct the military record of X. Be it enacted in the Senate and House of Representatives of the United States of America, in congress assembled, that the Secretary of War be and is hereby authorized and di-

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rected to correct and amend the military record of X., late assistant surgeon instead of nurse, so as to read: X., assistant surgeon of the United States Army, on the 12th day of April, 1863, and to place the name of X. upon the retired list of the United States army as assistant surgeon."

The second bill was as follows:

"Senate Bill xxx. Referred to the Committee on Claims. A bill for the relief of X. Be it enacted by the Senate and House of Representatives of the United States of America, in congress assembled, that the secretary of the treasury be and he is hereby authorized to pay out of any money in the treasury, not otherwise appropriated, to X., formerly a resident of W., in the state of Maryland, the sum of \$45,600, being the amount of the loss sustained by said X. in property and business while he was performing important service for the government in the year 1863, and in recognition of valuable service rendered the United States, and compensation for loss resulting from his causing the arrest of a Confederate spy at the opening of the Gettysburg campaign, thereby defeating the Confederate plan to capture the two thousand or more government wagons loaded with munitions of war of the Union army, which sum shall be in full of all claims and demands upon the part of the said X. against the government of the United States by reason of the premises."

Patient was soon apprehended and returned to the Government Hospital for the Insane, where he is at present.

In an extremely interesting brief of his case, prepared by the patient himself, which, unfortunately, is too lengthy to be given here in its entirety, he states, among other things:

"I was indicted on the 2nd of April, 1906, by the grand jury of said court, for perjury; the grand jury was about to adjourn, as they had no evidence upon which to indict me, but they were called back to do so in order to please the A. E. Company. The grand jury was authorized to indict me in order to please the A. E. Company, as I was later told by several members of that jury. I have also been told by numerous detectives that they were hired by the A. E. Company to watch me." He continues in his brief: "I was kept in jail until the eve of the 13th of February, 1905, when the jail doors were suddenly thrown open and I was told I could go home the same as the circumstances related in the Bible concerning St. Paul and Silas, who were in prison and during the night their chains fell off, the prison doors opened and they were set free by the hand of God. I believe the same thing happened to me; I was released by the hand of God." He further states: "There are more than 17,000 newspapers in the United States, and these people had it printed in 10,000 of them that I had committed perjury. I sued them for slander, and a more just and upright case or grievance for bringing suit could never be found."

Attention might be called here to the grandiose phase of his disorder. His was no common slander; it was published in 10,000 news-

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papers. Neither was his release from prison an ordinary every-day occurrence, but resembled the Biblical episode of St. Paul's release from prison. Later on, when through advanced years his intellect is becoming more and more enfeebled, he expresses his grandiose ideas in a more direct and naive manner. He tells the physician that he knows the law better than any living authority; that none of the so-called judges around town can compare with him; that he has made a brief of a case which could not be duplicated by anyone. He is likewise the greatest physician, and he will prove this when he gets to court. At this writing he is beginning to show evidences of senile deterioration and is no more the keen manipulator of the law of years ago. He endeavors now to gain his ends by more direct but extremely puerile and childish methods. To illustrate: His physician had left the institution about a year ago, and soon afterwards X. produced an affidavit purporting to have been given by this physician, in which it was set forth that X. was sound mentally; that this physician came to this conclusion after a thorough examination of X. etc., etc. Upon the physician's return to the hospital X. was asked concerning this by him, but he stolidly maintained that it was genuine and given him by the questioner. This famous litigant has reached a stage where things simply are as he wants them to be. Whether this poor derelict will be permitted by his deluded or unscrupulous attorneys to end his days in peace at the hospital, time only will tell. Thus far his lunacy case has been carried by them to the Court of Appeals.

Y. was found guilty of libel in the Criminal Court of the District of Columbia, and while awaiting sentence was adjudged insane by a jury and admitted to the Government Hospital for the Insane on June 22, 1911, at the age of 56. Y. is an attorney by profession, comes from a prominent family in Ohio, and has received an excellent education. According to information obtained from his father and sister, it appears that one sister and a nephew are insane; that the patient himself has been considered insane by members of his immediate family since 1889, when, as the result of a court-martial for disobedience, he was discharged from the navy, where he then held the grade of ensign. Immediately following this discharge he took up the study of law and began to specialize in maritime affairs, handling almost exclusively sailors' grievances against the Navy Department. He spent a great deal of time working up these cases, occasionally writing contributions to the *Maritime Register*, for which publication he was a regular correspondent for several years. In these papers he would constantly harp on the irregularities and illegalities of many of the government affairs. At home he always acted in a peculiar manner, never had much to say to

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anyone, was unreasonable, fault finding and complaining; he always wanted things his own way. Several years ago he came to live with his sister, accompanied by his wife and child. Although he paid nothing for board or lodging for the three, he complained about the food and had something to say in criticism of every little inconvenience. He would frequently leave town without saying a word to any member of his family, and would reappear just as suddenly. He kept to his room almost constantly, leaving same only for his meals. On one occasion he wrote his wife, who was at the time staying with her child at his sister's house, that she should watch this sister, as he feared she might try to poison the child. Some time in 1910 he came to his home town, had an interview with the judge of the Probate Court, and left town without visiting any of his relatives, although they lived only four squares distant. At that time this judge told the patient's father that he thought the patient was mentally unbalanced. He was always considered by his relatives as being of a morose disposition, vindictive and selfish. On a later visit to his parental home he acted very strangely about the house, disarranged things, kept the rooms in disorder, and was busy writing constantly. At this time he left home suddenly without taking leave of anyone. A few years ago, while home on a visit, he declared that his father was incompetent to manage his own affairs, instituted legal proceedings to have himself appointed committee for his father, petitioning the court on the ground of his father's insanity. In this, of course, he was defeated.

The patient himself states that he graduated from Annapolis in 1878, between which year and 1883 he traveled in Europe and South America as midshipman. In 1883 he entered the Cincinnati Law School, where he remained one year. After this he states he acted in the capacity of Judge Advocate General for a short time while on shore duty. He then went to sea again and finally resigned from the navy in 1887, with the grade of ensign. (As has already been indicated above, the patient was dismissed from the navy for disobedience and disrespect.) He then entered the practice of law in Cincinnati, at which he continued until his appointment to the Department of the Interior on June 1, 1904, at a salary of \$1,000 per annum. Here he remained until 1908 in the capacity of a clerk, when he resigned, receiving at that time the same salary. He says he was moderately successful financially as a lawyer, and did a good deal of literary work. He was especially proud of a case which he conducted in the Court of Appeals, where he obtained a decision setting aside a naval court-martial. He says that this is the only decision of this kind ever rendered, and on that account he is very proud of this. According to his own story, he

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was always moderate in his habits, and prior to his marriage in November, 1902, he was never in conflict with anyone. The latter part of this statement is contradicted by his relatives, who state that for more than twenty years past the patient has exhibited an uncontrollable desire to sue people for all sorts of imaginary grievances, and that on this account he frequently came into serious conflicts. The patient is inclined to put all the blame for his difficulties on his wife, whom he describes with a great deal of rancor as the descendant of an insane and illegitimate grandfather and illy favored mother. He thinks that his wife was slightly unbalanced, accuses her of being responsible for the death of their first child, and of various other bizarre misconduct. However, everything went tolerably well until April, 1906, when his second child was born. The doctor who attended Mrs. Y. during her confinement, a very prominent local physician, testified in open court at that time that from his observation of the patient's acts he believed him to be insane. This, the patient said, precipitated a lot of trouble between him and his wife. He does not enter into details concerning the difficulties he had with the physician, but the details are extremely illuminating. It appears that the patient refused to pay this doctor's bill and was sued for it. At the time of the trial, he gave as his defense the following two reasons why he should not pay this bill: The first one was that inasmuch as this doctor lived in a part of the city which would necessitate the crossing of a railroad grade in order to reach the patient's house, and that on this account there was the possibility of his being detained at the crossing during an emergency call, he had no right to take the case in the first place, and therefore he was not entitled to payment. His second reason was that inasmuch as this doctor wore a beard, he carried more germs into the house than would otherwise have had access to it; therefore he should forfeit his fee. In 1907 his wife obtained a divorce on the grounds of cruelty and non-support, and was given the custody of the child; this had the effect of launching the patient upon a new series of litigation. His first retaliating measure was the abduction of the child, which brought about his indictment by a grand jury and subsequent arrest. The reason he gave for taking the child out of the District was that his wife lived in a house over an old abandoned cellar, and that it was therefore an unhealthy place for a child. Upon regaining his freedom he began to investigate the grounds upon which the grand jury indicted him, and soon, he states, he discovered that the district attorney's office committed a gigantic fraud by having maliciously misrepresented the case to the grand jury; this body, he says, was led to believe that the Ohio decree granting his wife the guardianship of the child held good in the

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District, whereas the law of the District specifically states that no extra territorial decree should be recognized within the District. He further discovered that Mr. J., his wife's attorney, knowingly and maliciously became a party to this fraud, and he immediately proceeded to file charges of malpractice against this attorney before the Grievance Committee of the District Bar Association. The result of this was that the patient was charged with libel in the Criminal Court. To his great surprise, he says, the court recognized this charge and found him guilty of same. While awaiting sentence he was adjudged insane by a jury and committed to the Government Hospital for the Insane. He believes this commitment is the result of a deep laid conspiracy on the part of the district attorney's office and some of the district judges. These officials, he believes were afraid of him, because at the hearing before the Senate Committee he started to expose their fraudulent conduct. The judges were prejudiced against him throughout, and it might be interesting to mention here that among the multitudinous bills which he has proposed for enactment into law since in the Government Hospital for the Insane, there is one which is intended to abolish entirely the courts of the District of Columbia so that unfortunates like he might get a chance before unprejudiced judges. This deep conspiracy against him, he is convinced, dates as far back as 1906, when the Ohio courts appointed him guardian of his child.

No great difficulty need be experienced in forming an opinion of this man's mental status after having followed his history thus far, but when we further read that during his sojourn at the Government Hospital for the Insane he has evinced the most persistent tendency to weave into his delusional system every important occurrence of local or even national interest, that he sees a clear relationship between his case and the recent change of administration, and he is fully convinced that many important officials held over from the last administration owe considerable gratitude to him. When he is seen in his self-assumed most important role of the man of destiny, flooding congress, the courts and many high officials with petitions, charges, writs, pleas, and proposed investigations, when one sees the criminal code as transformed by him, then one first begins to get a proper perspective of the grandiose phase of this man's mental disorder. It is impossible, of course, with the limited time at our disposal, to even give the briefest outline of his activities, but it might be stated that only within the past several months he has succeeded in very ingeniously getting his case before a considerable number of senators and congressmen and many other prominent officials. Among the bills which he proposes to have enacted into law, members of congress, is one, as has been mentioned, to abolish entirely

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the courts of the District of Columbia. Of course, courts which cannot administer justice as he sees it must be abolished.

On his admission to the Government Hospital for the Insane he really welcomed the procedure, stating that at last he had the opportunity to be under the supervision of a trained physician who would soon discover that he was absolutely sane and would render a report to that effect, thus vindicating him. Unfortunately for the physician, he did not see his way clear to render such a report, and Y.'s amiability soon changed into a very bitter antagonism towards the one who had immediate charge of him, showing a great deal of rancor in his attacks upon him, in spite of the fact that he has been accorded all sorts of privileges. He has, of course, by this time consigned many hospital officials to life imprisonment, and the amount of damages which he expects to collect from them and the government runs into fabulous sums. He soon began to solicit the grievances of his fellow patients, establishing, so to speak, a law office in miniature upon the ward; and whereas formerly these patients in the criminal department merely aired their grievances as they saw them, they now accompany them with quotations from the statutes concerning these points furnished by this legal missionary. Soon, however, even the insane patients on his ward began to distrust him, and at the present time there is hardly an attendant or other patient in the building who cares to associate with Y. He missed no opportunity of playing upon the credulity of the younger and more naive attendants in the criminal building, at first begging and urging them to carry his petitions to their destinations in a surreptitious manner, and finding this of no avail he threatened them with fines and imprisonment as the accomplices in this gigantic crime of keeping him confined in a hospital. When not out walking he keeps himself constantly busy making out documents, briefs, petitions, and bills, etc. He is very seclusive, keeping himself aloof from the other patients, as he considers himself very much their superior.

Now this master litigant, this profoundly diseased man, succeeds in making quite a normal impression in a casual interview, and in his writings he frequently succeeds in conveying the idea of being quite normal. Each isolated fact, each separate rung in this crazy ladder, looks plausible enough to the casual observer. He talks quite rationally, shows a remarkably well preserved memory, has never exhibited hallucinations or those gross disorders of conduct which to the lay mind form the *sine qua non* of mental disease. It is only after a close study of the entire life history, of the many fine shades of deviation from normal which this man exhibits, that one discovers that his mind is

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very seriously affected indeed, and that because of his plausibility he belongs to a rather dangerous type of mentally diseased individuals.

The chief aim of this paper has already been indicated, and we shall adhere to our original intention of rendering it as free from purely didactic considerations as is consistent with clearness. For this reason the case histories given above were considerably abbreviated and only such an account rendered as would suffice to convince even a layman that the two individuals in question are seriously affected mentally. Of this there should not be the slightest doubt in anyone's mind, neither should one encounter here any diagnostic difficulties. The only difficult point, and a point which may become of considerable forensic importance, is the exact estimation of the duration of the illness in each instance. From the available data at hand, it would seem that in the case of X. the disease had its inception in the episode during the late Civil War, though the possibility of retrospective falsification must be kept in mind, while Y. seems to have been launched upon his litigious career by his dismissal from the navy. It is, therefore, but fair to assume that in both instances the disease has existed for a great number of years. Nevertheless, it was only when these individuals faced the bar as defendants in criminal suits that the disease was recognized in either case. One may readily see, therefore, how easily mental disease may remain undetected, especially if one neglects to take an inventory of the individual's past life. I have already alluded to the difficulty frequently experienced in having evidence of this nature accepted in a court of law, and here, it seems to me, is room for a good deal of reform in procedure. Thus far society's side of this problem has been chiefly emphasized; but what about these unfortunate derelicts, X. and Y.? Both of them are at present confined in the criminal department of the Government Hospital for the Insane, with criminal charges still pending against them. Assuming that our contentions with respect to their mental status are correct, what possible justification is there to hold them responsible before the law for their acts? Nevertheless, the same sort of procedure is constantly taking place; individuals are sent daily to hospitals for the insane, presumably for the purpose of giving them the best possible chance of recovering, the best methods of treatment, while at the same time the law persists in carrying them as individuals charged with a crime, thus throwing many obstacles in the way of proper care and treatment. With many of these individuals the mere fact that there is still a criminal charge pending against them serves to act in a deleterious manner upon their mentality, while in the great majority of instances, owing to the fact that they must be



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carried as criminals, unusual precautions have to be resorted to both in their confinement and in the matter of various privileges, thereby vitiating in a great measure all attempts at treatment.

These are some of the problems which present themselves from a study of life histories such as are here reported, a better mutual understanding concerning which between the lawyer and the physician would unquestionably tend to a more enlightened administration of the law.

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# A STUDY OF JUVENILE DELINQUENCY AND DEPENDENCY IN LOS ANGELES COUNTY FOR THE YEAR 1912.<sup>1</sup>

EMORY S. BOGARDUS.<sup>2</sup>

This study covers all the cases which were entered in the Juvenile Court of Los Angeles County for the year 1912. The cases number from "3,645" to "5,124," and hence include 1, 479. Of this 1,479, the writer finds 381 were dismissed (a small part of this number were contributory). Nearly all of the remaining 1,098 cases were placed on probation (a small percentage were sent to the state or other industrial schools).

TABLE I.

Delinquency and Dependency, Los Angeles County, 1912; 1,098 Cases.

	Nos.	Per Cent.
Delinquent boys .....	374	34.0+
Delinquent girls .....	55	5.0+
Dependent boys .....	342	31.1+
Dependent girls .....	327	29.8+
Total .....	1,098	100.0

Table I shows that of the 1,098 cases in which the court sustained the charge, 716, or 65.2 per cent, are credited to boys and 382, or 34.7 per cent, are credited to girls. The proportion of boys to girls is almost exactly two to one.

The writer has taken the 1,098 cases for the year 1912 in which the charge was sustained and analyzed them from a sociological point of view. Many cases which for legal purposes would be classified as dependency for sociological purposes would come under the term

<sup>1</sup>This study was initiated by Mr. E. Guy Talbot, formerly of Los Angeles, now (1914) of Sacramento. The court records were made available through the courtesy of Mr. Hugh Gibson, chief probation officer, and Judge Curtis D. Wilbur. Much of the tabulation and classification was done by students in the Department of Economics and Sociology, the University of Southern California. A considerable part of the credit for the work involved in this paper belongs to Miss Martha Dresslar and Miss Romaine L. Poindexter. They were assisted by Mr. Wilson McEuen, Mr. Ross Hodson, Mr. William Malan, Miss Josephine Rogers, Miss Martha Steele and Mr. C. J. Pfaffenberger.

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delinquency. In other words, the legal term "dependency" is interpreted by the court to include certain cases of delinquency.

Some boys and girls seems to be both delinquent and dependent, but in nearly every case it was evident that one condition was more or less primary to the other. Table II gives the results of the preliminary analysis.

TABLE II.  
Sociological Analysis, 1,098 Cases.

	Nos.	Per Cent.
Delinquent boys .....	502	45.7+
Delinquent girls .....	179	16.3+
<hr/>		<hr/>
Total .....	681	62.0+
Dependent boys .....	213	19.3+
Dependent girls .....	204	18.5+
<hr/>		<hr/>
Total .....	417	37.9+
<hr/>		<hr/>
Grand total .....	1,098	100.0

Of the 1,098 charges that were upheld, 681, or 62.0 per cent, may be classed as delinquency (sociologically) and 417, or 37.9 per cent, as dependency. The proportion is not quite two to one. With reference to delinquency, 502 cases were boys and 179 were girls. The proportion of boys to girls is not quite three to one. Dependency is rather evenly divided between boys and girls, a result that might be expected, since dependency is a state more directly related to environment (largely social) than is delinquency and since dependency hence would fall alike upon both boys and girls. Delinquency is also vitally a matter of social environment, but it depends very definitely upon the personal equation, temperament and so forth; hence boys, either by virtue of a different reaction or as a result of having a different social environment than girls, appear to be in nearly three times as great a danger of becoming delinquent as are girls.

On the basis of the analysis as given in Table II, the delinquent boys and girls were classified according to ages. Table III gives the age statistics.

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TABLE III.

## Delinquency Age Statistics.

Age. Years.	Boys.		Girls.		Total.	
	Nos.	Per Cent.	Nos.	Per Cent.	Nos.	Per Cent.
8 .....	6	1.1+	..	..	6	0.8+
9 .....	10	1.9+	..	..	10	1.4+
10 .....	16	3.1+	..	..	16	2.3+
11 .....	23	4.5+	..	..	23	3.3+
12 .....	34	6.7+	3	1.6+	37	5.4+
13 .....	24	4.7+	4	2.2+	28	4.1+
14 .....	53	10.5+	20	11.1+	73	1.0+
15 .....	81	16.1+	37	20.6+	118	11.3+
16 .....	107	21.3+	33	18.4+	140	20.5+
17 .....	101	20.1+	39	21.3+	140	20.5+
18 .....	28	5.5+	28	15.6+	56	8.2+
19 .....	11	2.1+	11	6.1+	22	3.2+
20 .....	3	0.5+	4	2.2+	7	1.0+
Others .....	5	0.9+	..	..	5	0.7+
Totals ...	502	100.0	179	100.0	681	100.0

The table shows that the period from fifteen to seventeen years of age is especially dangerous for boys. Bodily development comes ahead of the corresponding mental control. There is insufficient control or inhibition of instinctive impulses. The adolescent is unusually susceptible to suggestion of all kinds, without possessing needed discriminatory power.

As far as Table II presents typical facts, it shows that delinquency begins later with girls than with boys, perhaps due to longer protection in the home.

In spite of this apparent delayed delinquency, the problem of delinquency with girls reaches its height at about the same age period as with boys. Chart I is based on Table III and gives the age curve for delinquency among boys and among girls. It also shows in a crude way the much greater proportion of delinquency among boys than among girls.

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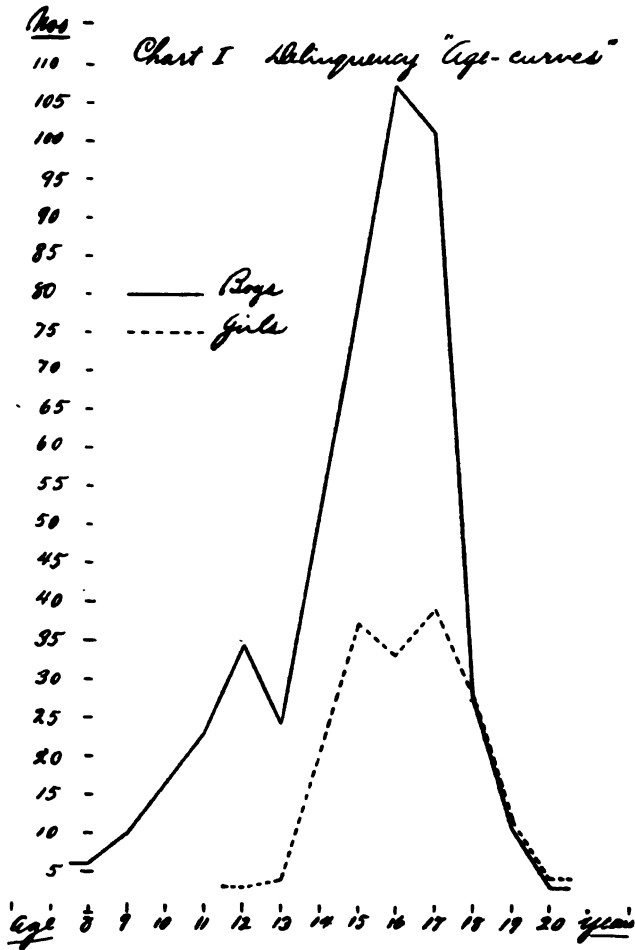


Table IV, which gives the dependency age statistics, shows that the numbers in the age column for dependent boys run remarkably parallel with the numbers in the age column of dependent girls. The causes in both cases are to be found outside the lives of both boys and girls; namely, with parents. The "high" years are from birth until the beginning of the "teens." From birth until the child can begin to earn his own living he is in especial danger of becoming the victim of his parents' inability or unwillingness to support him.

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TABLE IV.  
Dependency Age Statistics.

Age. Years.	Boys.		Girls.		Total.	
	Nos.	Per Cent.	Nos.	Per Cent.	Nos.	Per Cent.
Under 1 .....	13	6.1+	13	6.3+	26	6.2+
1 .....	15	7.0+	17	8.3+	32	7.7+
2 .....	16	7.5+	15	7.3+	31	7.5+
3 .....	14	6.5+	14	6.8+	28	6.7+
4 .....	17	7.9+	12	5.8+	29	7.0+
5 .....	16	7.5+	15	7.3+	31	7.5+
6 .....	16	7.5+	15	7.3+	31	7.5+
7 .....	14	6.5+	13	6.3+	27	6.4+
8 .....	9	4.2+	14	6.8+	23	5.5+
9 .....	14	6.5+	8	3.9+	22	5.3+
10 .....	15	7.0+	11	5.3+	26	6.2+
11 .....	9	4.2+	11	5.3+	20	4.8+
12 .....	13	6.1+	6	2.9+	19	4.5+
13 .....	9	4.2+	8	3.9+	17	4.0+
14 .....	9	4.2+	10	4.8+	19	4.5+
15 .....	8	3.7+	9	4.4+	17	4.0+
16 .....	1	0.4+	8	3.9+	9	2.1+
17 .....	3	1.4+	4	1.9+	7	1.6+
Others .....	2	0.9+	1	4.0+	3	0.7+
Totals ...	214	100.0	204	100.0	417	100.0

Chart II Dependency "Age-Curves"

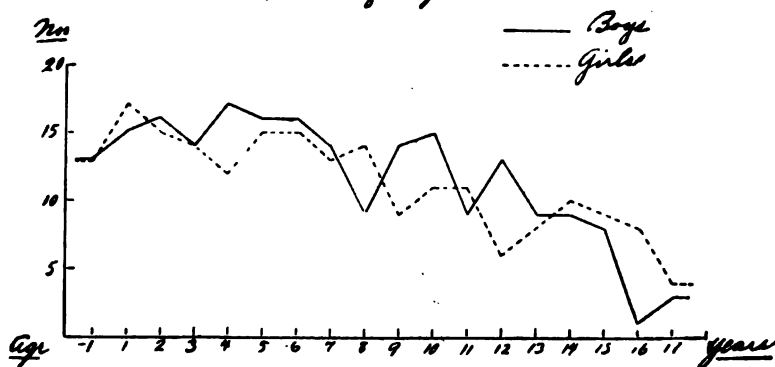
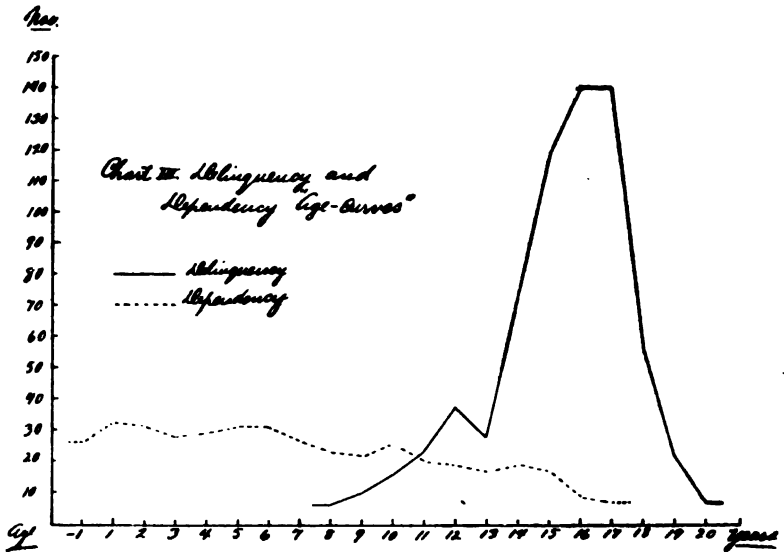


Chart II is based on Table IV and shows the comparative age curves for dependent boys and dependent girls. Chart III is based on columns 5 and 6 of Tables III and IV and shows in a comparative

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way the age curves for juvenile dependency and for juvenile delinquency. When the dependency curve begins to fall, the delinquency curve begins to rise. It should be noted that the curves cross at about the eleven year age point, and that they begin distinctly to separate at the beginning of the "teens."

Hence, it may be inferred from this study that many children of the congested centers of our large cities are in danger of suffering from poverty until they reach their years of adolescence. But at the beginning of adolescence the danger of poverty is replaced by relatively twice as great a danger—that of delinquency—due to the appeal made by the environment to the feelings and passions before adolescents have had opportunity to acquire control over those passions.

In classifying the charges against delinquent boys and girls I have again used a different method from that of the probation office. In nearly every case there were two or more anti-social tendencies. In going over the records I have tried to determine as far as possible the probable "primary" charge or charge which is more or less fundamental to the others in the given case. In 44 cases of delinquency among boys and in 4 among girls it was not possible to make such an analysis. Table V gives the results for boys.

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### TABLE V.

#### Charges Against Delinquent Boys.

Offense.	Nos.	Per Cent.
Petty larceny .....	98	19.3+
Burglary .....	84	16.7+
Incorrigible .....	72	14.3+
Speeding .....	46	9.1+
Immorality .....	35	6.9+
Grand larceny .....	34	6.7+
Disturbing the peace.....	27	5.3+
Assault .....	23	4.2+
Forgery.....	14	2.7+
Vagrancy .....	8	1.5+
Destroying property .....	8	1.5+
Highway robbery .....	4	0.7+
Murder .....	3	0.5+
Gambling .....	2	0.3+
Unclassified .....	44	9.1+
<hr/>		<hr/>
Total .....	502	100.0

Petty larceny and burglary head the list for boys and offenses against property stand high in the total. In the adolescent boy the desire to acquire things is strong, the things which satisfy these desires are at hand, but, as would be expected, sufficient individual self-control has not yet developed, and delinquency is the result. In the fact that self-control is slow in developing, or in being developed by the parents in the adolescent, the modern complex city life and conditions have much for which to answer.

### TABLE VI.

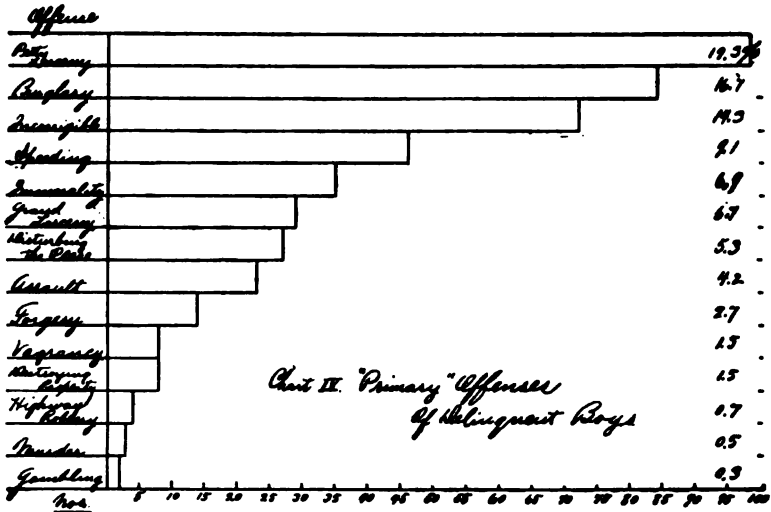
#### Charges Against Delinquent Girls.

Offense.	Nos.	Per Cent.
Being lewd and dissolute.....	114	63.0+
Incorrigible .....	49	27.3+
Petty larceny .....	5	2.7+
Vagrancy .....	3	1.6+
Burglary .....	2	1.1+
Disturbing the peace.....	2	1.1+
Unclassified .....	4	2.2+
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Total .....	179	100.0

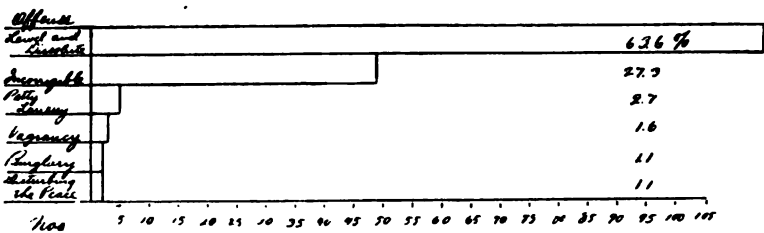


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From Table VI it will be seen that the charge of "being lewd and dissolute" among delinquent girls is very prominent. This fact has been found to be paralleled in an interesting way by the results of a study of women offenders.<sup>3</sup> This study included the cases of 183 women offenders who were received into the city jail of Los Angeles from March 1, 1914, to April 25, 1914. Of the 163 offenses which were given in the records, 90, or 55 per cent, were for prostitution in one form or another. Hence the high percentage of immorality charges against delinquent girls is paralleled by the fact that among women offenders the same charges are larger in numbers than all other charges combined.



*Chart V. Primary Offenses of Delinquent Girls*



<sup>3</sup>Made by Miss Alice Bates an advanced student in the Department of Economics and Sociology, The University of Southern California.

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It should be noted, also, that girls cannot escape the results of their acts as readily as boys and that probably there is a higher percentage of immorality among boys than Table IV indicates. A marked percentage of disobedience and incorrigibility is shown in both the boys' and girls' records. There are many modern city conditions which tend to distract the parents' attention from the adolescent and to draw the adolescent away from the influences of parental control at an abnormally early age. Charts IV and V are based on Tables V and VI respectively.

The records concerning the marital condition of the parents of delinquent and dependent boys and girls afford a basis for interesting statistics. Table VII refers to the parents in the delinquency cases.

TABLE VII.

### Marital Condition of Parents of Delinquent Boys and Girls.

	Boys.	Pct.	Girls.	Pct.	Total.	Pct.
Parents living together. . . . .	262	52.1+	63	35.1+	325	47.7+
Father dead . . . . .	50	9.9+	18	10.0+	68	9.9+
Father away . . . . .	24	4.7+	10	5.5+	34	4.9+
Both parents dead. . . . .	22	4.4+	7	3.9+	29	4.2+
Both parents away. . . . .	12	2.3+	8	4.4+	20	2.9+
Mother dead . . . . .	22	4.4+	14	7.8+	36	5.2+
Parents separated . . . . .	12	2.3+	9	5.0+	21	3.0+
Parents divorced . . . . .	11	2.1+	6	3.3+	17	2.4+
Step-father . . . . .	14	2.7+	7	3.9+	21	3.0+
Step-mother . . . . .	5	0.9+	3	1.6+	8	1.1+
Unclassified . . . . .	68	13.5+	34	18.9+	102	14.9+
<b>Totals . . . . .</b>	<b>502</b>	<b>100.0</b>	<b>179</b>	<b>100.0</b>	<b>681</b>	<b>100.0</b>

It will be seen from Table VII that 325 delinquents, or 47.7 per cent, came from homes in which the parents were living together. Many of the charges, especially in the girl's cases, were preferred by the parents. Hence it will appear that in 47.7 per cent of the cases the home life was not of a successful order. On the other hand, 52.2 per cent of the delinquents came from homes where the parents are not living together. This fact implies that a broken-up home is a definite factor in juvenile delinquency. In only 35.3 per cent of the cases of delinquent girls were the parents reported as living together. Since broken-up homes were more frequent in the case of delinquent girls than in the case of delinquent boys, it may be inferred that a broken-up home signifies even a greater danger for girls than for boys.

Table VIII gives the marital conditions, objectively considered,

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of the parents in juvenile dependency cases. Chart VI is based on Tables VII and VIII.

TABLE VIII.

Marital Condition of Parents of Dependent Boys and Girls.

	Boys.	Pct.	Girls.	Pct.	Total.	Pct.
Parents living together....	60	28.1+	46	22.5+	106	23.0+
Parents separated .....	41	19.2+	42	20.5+	83	19.9+
Never married .....	17	7.9+	31	15.1+	48	11.5+
Parents divorced .....	15	7.0+	12	5.8+	27	6.4+
Mother dead .....	15	7.0+	19	9.3+	34	8.1+
Father dead .....	14	6.5+	14	6.8+	28	6.7+
Father away .....	9	4.2+	10	4.9+	19	4.5+
Both parents away.....	9	4.2+	..	..	9	2.1+
Both parents dead.....	8	3.7+	8	3.9+	16	3.3+
Step-mother .....	3	1.4+	3	1.4+	6	1.4+
Step-father .....	2	0.9+	4	1.9+	6	1.4+
Unclassified .....	20	9.3+	15	7.3+	35	8.3+
Totals .....	213	100.0	204	100.0	417	100.0

In only 106 cases, or 23.0 per cent, of the 417 dependent cases were the parents found to be living together. It would seem that a broken-up home is even a greater factor in juvenile dependency than in the delinquency cases. In this table the item "parents never married" stands high with its accompanying implications of illegitimacy and child abandonment. In both Tables VII and VIII the item "father living, but away" figures noticeably, but, on the other hand, in both groups of figures the item "mother living, but away" is almost negligible.

The study of the Los Angeles Juvenile Court records for the year 1912 implies the existence of other interesting and valuable facts. Data, however, for the other implied facts are not to be found in the records in a high enough percentage of cases to justify the drawing of conclusions.

Chart II. Marital Condition of Parents



## THE DEFECTIVE DELINQUENT

WILLIAM J. HICKSON.<sup>2</sup>

One of the most valuable innovations in modern judicature is the establishment of specialized courts, which devote themselves exclusively to the trial of one class of cases, both on the civil and criminal sides. This conduces to a high degree of efficiency. A similar movement we find well exemplified in medicine, where specialists and special hospitals or wards have long ago proven their efficiency.

The first and most specialized court of this kind is the Municipal Court of Chicago. Here are to be found in successful operation a Morals Court, a Court of Domestic Relations, a Boys' Court and others.

Another important innovation of this court is the establishment, under the initiative of Chief Justice Olson and his associates, of a psychopathic laboratory, working in conjunction with all the branches of this great Chicago court system. The laboratory is situated in the midst of the courts, convenient for the judges to refer cases to it for immediate opinion. The specialization of the courts is of immeasurable benefit to the laboratory, because it secures a grouping of our cases for us as well as some of the data concerning each group. A high degree of efficiency is developed also through specialization among those who are engaged in social and legal work about the courts and upon these we rely for certain data.

The psychopathic laboratory was inaugurated May 1 of the present year. The plan is to have an experimental as well as a practical laboratory, similar to those directed by Kraepelin, Ziehen, Bleuler, Sommers, Bonhoeffer, Raymond and Janet, and others in Europe, excepting that it will be devoted exclusively to court cases.

The present paper deals especially with the working of the laboratory in relation to the Boys' Court. This court deals with delinquent minors, between the ages of seventeen and twenty-one, thus embracing those ages touching on the Juvenile Court age on the one side, and the age of full legal responsibility on the other. The court was established to meet a demand for the same specialized treatment and advantages that the juveniles are receiving. It was felt that many of these boys were suffering from retarded adolescence, and that they should have such opportunities and care as special courts with the co-operation of social agencies could give them. At the same time

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<sup>2</sup>Director of the Psychopathic Laboratory, Municipal Court, Chicago.

WILLIAM J. HICKSON

those of this group who are committed to a penal institution must be protected against contact with adult offenders.

Our first visit to the Boys' Court, where we had the opportunity of looking over forty or fifty boys awaiting trial in the judges chambers which the judge has given up for the use of these boys, convinced us that this would be a good place to begin our work, because we not only planned to diagnose the cases before they should go to the judge, but also to collect data for future legislation and information as to the feeble-minded, insane, and criminal. Even a casual glance showed us what we were dealing with—all these classes in this court. Judge Scully, of the Boys' Court, told me he could see without mental tests the subnormal nature of many of the boys he was dealing with.

From May 1 to June 15 of this year, since the opening of the psychopathic laboratory, 1,233 cases have been disposed of in the Boys' Court. About one-half of this number were out on bail and only a few of these we had an opportunity to test. The majority of the cases we investigated were those who were not admitted to bail. There were approximately 600 of the latter class. Of these we examined 245, or almost one-half. Most of the intelligence tests were done by Mrs. Hickson, who not only had experience in Europe with other tests, but also in giving the Binet-Simon tests in a standardized manner. This insured reliability and uniformity. Experience, reconfirmed daily, has taught us not only the necessity of standardizing the Binet-Simon scale for American children, but, equally so, the necessity of the standardization of the technique, the stating and marking of questions and answers respectively. This side of the matter seems to have been ignored by many investigators and this has caused much misunderstanding and unjust criticism of the scale. Mrs. Hickson has been training volunteers for our work according to standardized methods and we hope presently to have a force large enough to cope with the entire situation here. We give the test not only in English but also in Polish, Bohemian and German when it is necessary. The German blanks for the Binet-Simon tests are similar to those used by me in the clinic in Berlin.

In addition to the Binet-Simon scale, which answers our purpose in some cases, and is helpful in others, but far from sufficient for all of our work, we rely upon the Rossolimo Psychological Profile Method, the Graduated Association Test, the De Sanctis, the Standard Psychiatric tests and others. These tests were not only used many times to confirm the Binet-Simon tests but were found indispensable in the high-grade and borderland cases. We used the Binet-

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Simon scale both quantitatively and qualitatively. In this paper we will report only on our findings with the Binet-Simon tests and will report at another time our experience with the other tests. We were, of course, during this time, examining cases from the other courts, such as the Morals Court and Court of Domestic Relations, as well as from the Boys' Court.

Chief Justice Olson tries to account for the large number of boys coming into the Boys' Court—as high as 110 one day—by the fact that it is a new court, having been inaugurated in March of this year; that it is surrounded by very efficient civic and social agencies who take great pains to find work for the boys and help them along in various ways and for the reason also that the police have been taking in many of the troublesome boys in their districts in the hope of helping them.

Of the 245 boys from this court that we examined we found only eighteen, or 7.34 per cent, who were of normal intelligence on the Binet-Simon scale. Several of these showed other defects, such as a moral defect, in much the same way that a man might have a defective mental capacity for music, mathematics, language, etc. Others were homosexuals, drug habitues, psycho-neurotics, etc.

Twenty, or 8.16 per cent, of the 245 were borderland cases. It was necessary to confirm our finding in both the above groups by additional tests.

Two hundred and seven, or 84.49 per cent, of the 245 cases were distinctly subnormal morons.

These figures are very high and if further substantiated as I feel they must be because our work thus far has been most carefully done, and in our marking on the scale we have erred, if at all, on the side of leniency rather than otherwise. We have in all cases counted doubtful answers as a plus. We think, however, that our figures will fall somewhat lower than those I have quoted when we shall have examined the boys who are out on bail. These, in some cases, may be of a higher degree of mentality.

Our intellectually normal cases, on the average, had attained a chronological age of 20.94 years; their average basal age was 10.83 years, and their total age was 12.70 as measured on the Binet-Simon scale.

The borderland cases gave an average chronological age of 20.10 years, a basal age of 10.42 years and a total of 12.27.

We got the points above 12 years in the preceding two groups, normal and borderland, by giving certain of the questions in the fifteenth year and adult groups. It was interesting, as confirmatory of

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our other tests which we depended on principally to diagnose these two groups to see how they came out on the Binet-Simon scale, as far as it goes. The moron group gave an average chronological age of 18.71 years, a basal age of 8.69 years and a total mental age of 10.98 years.

It is significant to compare the ages at which the different groups find their way into the courts. The moron group is there 2.23 years earlier than the normal group; the borderland cases 0.84 of a year before the normal group. This high age average, 20.94 years, will almost eliminate the normal intellectual group from the Boys' Court. This is a great misfortune, because many of these cases deserve special consideration. They show a mental defect instead of mental defectiveness as contrasted with the two lower groups.

We think there is considerable significance in the mentality at the basal age and in the distance between the basal and aggregate mental age, but we deplore the ill-founded and hasty conclusions indulged in some quarters, of diagnosing insanity or epilepsy, in all cases that scatter on the Binet-Simon scale. For example, one public school system that had been tested by the Binet-Simon scale, and that came under my observation, showed 50 per cent of the children, both normal and subnormal, to be epileptic or insane. The epileptic or the insane may scatter on the test but the belief that everybody who scatters is insane is unfounded. We find also that many of our dementia praecox cases and epileptics go through the whole scale perfectly. We find, too, considerable degrees of mental defectiveness in persons who pass the twelve-year tests on the Binet-Simon scale, and if it were not for our other tests we might not be able to diagnose the true condition of affairs. Many workers are certifying everyone who can pass the twelve-year-old tests as normal mentally. This is making the test fit the case and is leading to incorrect reports.

The significance of our findings in the Boys' Court cannot be taken too deeply to heart, and the true situation is so misunderstood and the general attitude toward it so inconsistent that immediate remedial measures are demanded. These cases deserve to be better understood, and deserve our pity rather than our present attitude of indifference, for they are not fully responsible; they should not be driven from pillar to post, relentlessly hounded, treated with contempt and punishment as they now are on all sides, due to our ignorance of the true status of affairs. Information on this subject must be spread broadcast at once and the proper, humane, medical and constructive measures must be instituted.

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The situation with the feeble-minded now is a repetition of that which once obtained in the case of the insane, no end of which unfortunates have been made victims of the law and have been punished as criminals even to the extent of being made to suffer capital punishment.

We have been keeping open house in our laboratory to demonstrate how serious the situation is. We have invited the foremost social workers and public-spirited citizens of the city to come to see personally what we are finding. As a result of this their great humanity and civic zeal have already led to the organization of city and county committees and there is every prospect of an immediate relief until the proper legislation can be secured and the situation adequately dealt with. It is quite obvious that the whole method of handling these cases at the bar of justice will have to be changed: It grows daily more and more evident that crime is a disease and will have to be so regarded and dealt with.

The significance of our findings is just as important economically and sociologically as it is in other respects and is little less than revolutionary. The conditions we are unfolding explain why these boys cannot find work and if they do why they cannot hold positions; a source of repeated discouragement to the social worker.

We must assume in all of this work the inter-relation of brain and mind; that all of our thinking and doing are brain processes. It then becomes quite easy to accept the idea that a diseased brain is at the bottom of diseased behavior and it is just as logical to expect a man with a diseased heart or lungs to have a good circulation or respiration as to expect the man with a diseased brain to have it function normally. The time is ripe for us to eliminate the idea of criminality and treat these cases scientifically and with understanding while so many investigations are pointing the way. It is more humane and hopeful also to regard these cases in this light than in that of criminality.

Over one hundred admissions which I made into the Training School at Vineland showed organic brain lesions. Even eight of the Mongolian type of feeble-minded in this group who are regarded by some as set apart from other feeble-minded, showed these lesions. The significance of these findings, if borne out by further investigations, is of the greatest importance to the whole field.

I may speak of another practical test that may be called the "World Test." It takes cognizance of the manner in which the youth manages himself in relation to an occupation. Parents expect their boys to become self-supporting at least, and one of the many



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proofs of this is the large number of our cases in which the parents are complainants because the boys won't find work, and if they do, cannot hold a job for more than a very short time. They are scolded and upbraided by the parents who in their ignorance do not realize that they are unjustly punishing their offspring; a very incongruous state of affairs.

The stories told us by the social workers is a further confirmation of this. These social agencies have been attempting to find work for the delinquents from the courts, but most of those to whom I have talked are very much discouraged, for the boys they do succeed in placing, as a rule, hold the position only for a few days or weeks, and the few who hold on longer are, as a rule, the first to be laid off in periods of retrenchment, especially in the face of new efficiency ideals maintained by most business houses.

If we needed any further confirmation of these reports from our intelligence scales we could go back to the school records and find that according to the statement of the boys themselves, at least 70 per cent have been left back one or more times, though we would not consider this an infallible test by any means. Another confirmation is found in the circumstances surrounding the crime and arrest of these cases, which is very elucidating. These cases in addition, being capable mentally of doing only the lowest, hardest and poorest paid work, can find only this kind of work, and naturally it is very distasteful.

A further test is found in the large number of repeaters. We know of at least 15 personally in the six weeks since the establishment of the laboratory who have been re-arrested.

The economic side of this question deserves much more attention than it has received. The time is come when business houses will find it to their advantage, from many sides, such as industrial insurance, as well as efficiency, to keep morons out of their employment. Who knows how many serious accidents on land and sea might have been averted if morons had been weeded out?

Our results in the Morals Court, as far as we have gone, are almost as bad as what we have been finding in the Boys' Court. Our records are not quite so full in this court as in the Boys' Court, as we have not had enough assistance to cover all the ground, but we have already gone far enough to see that we have stirred up about the same kind of a situation here as in the Boys' Court. The story of the "Madame" of a successful house of prostitution, who came before Judge Goodnow of the Morals Court, and who was examined with the rest of the inmates by Mrs. Hickson, is typical. She practically diagnosed her own case. She had poor but respectable parents; gave up school early

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because she could not learn; she felt she was too stupid to take a position in a shop or store because she knew she did not have the ability to measure a piece of ribbon nor weigh groceries, and her present life was the only one open to her. This woman was aged 37 chronologically; she had a basal age of 8, and a total mental age of 10. Chief Justice Olson, in an address before the Purity Congress at Minneapolis in November, 1913, handled this subject in a masterly way, which will bring its import home to the laity as well as the bar.

The Domestic Relations Court has contributed also its quota of feeble-minded to our already overflowing list. There is no doubt about it that a large percentage of marital unhappiness and shipwreck has feeble-mindedness at the bottom. We have found fathers and mothers of large families testing ten and eleven years old mentally, whose affairs are so hopelessly and intricately involved that a Solomon would be staggered by the task of trying to straighten them out. Some of these parents had their feeble-minded offspring with them.

We have refrained in this paper from making any reference to the large amount of insanity of all degrees from the borderland to the well-developed case, which we are finding in these various courts; the Boys', the Morals, but especially in the Domestic Relations Court where the percentage is quite high. We are also called upon often by the latter court for medical diagnoses, capacity to work, etc.

Something must be done and done quickly to relieve this situation now that the true conditions are coming to light. It means, of course, a new attitude toward crime and criminals; it means a re-making of the law dealing with these cases guided by a scientific understanding of the whole matter.

I hope I have shown in a measure, at least, what the true condition of affairs is, the importance of taking remedial measures at once, and also the importance of establishing psychopathic laboratories in connection with all of the courts, which latter should be specialized and centralized to facilitate not only the work of the laboratory but the work of the courts themselves.

Such laboratories should be both practical and experimental; practical in that they not only diagnose those accused before the court, but witnesses also in some instances. It should be experimental in order to further our knowledge of the important and little understood subject of criminality. The cases should be examined as to their heredity, their previous medical and social history: their neurological, mental and economic status, etc.

## THE RECIDIVIST.<sup>1</sup>

PAUL E. BOWERS.<sup>2</sup>

The history of the treatment of the criminal bears a striking resemblance to that of the insane. In fact the methods of treating these two maladies of social and physical degeneracy have been identical, have passed through the same periods of evolution and have arrived at the same goal.

The insane were at one time regarded as demon-infested individuals and they were subjected to all manner of barbarous and cunning cruelties to expel evil spirits which were thought to possess them. Later this view was somewhat changed and their insanities were looked upon as being the results of original sin. Religious remedies and lessons in morality were applied, but without results, while methods of torture and punishment were resumed.

The lot of the insane was indeed a sad one until Pinel in 1793 broke the shackles of iron and prejudice from the mentally diseased, proved them to be sick individuals and not the abode of evil spirits or the objects of wrath of an angry God. This marked the beginning of the period of scientific treatment which is in force at the present.

The first idea that regulated humanity's dealings with the violators of her laws was that of vengeance and retaliation. Much time was spent in contriving plans and constructing devices for the torture of prisoners. The stage of vengeance was succeeded by the period in which the idea of retributive justice was prominent. Prisoners were punished cruelly and without reason, the more severe the punishment, the more efficacious it was thought to be. As charitable and modern religious ideas began to permeate and diffuse themselves into the social consciousness, the period of reformation followed the futile and barren era of retribution. The idea of reformation then governed and designated in a large manner the way in which criminals should be dealt with. Prisoners were sent to prison to be reformed and preached at, and though loud were the claims of the reformers many of whom, I regret to say, found their reformatory methods so profitable that they will not relinquish their pet theories even though multitudes of failures are present everywhere, which even a juggling of statistics cannot hide.

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<sup>1</sup>Read at the annual meeting of the Illinois Branch of the Institute, Chicago, May 26, 1914.

<sup>2</sup>Physician in Charge, Indiana State Prison; President Prison Physician Association; First Lieutenant Medical Reserve Corps, U. S. A.

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Just as in the case of the insane we have at last entered upon a scientific and humanitarian era in criminology. We no longer regard the habitual convict a demon-possessed unfortunate, or the wilful and conscious chooser of evil, but we do believe, after science has pushed through the crust of orthodoxy and delved into the study of those forces which regulate his actions, that he is mentally and physically defective, that his crimes are manifestations of pathological conditions due to defects of cerebral development or to acquired retrograde changes of the central nervous system.

No matter how hard it may be to view the criminal as a sick man from the pulpit or from the dignified and solemn bench of the jurist, where we have condemned for deliberate sin or have pronounced the penalties of the statutes, we will get that view if we study crime and criminals, not from afar off but in our shirt-sleeves and in the laboratories of psychopathology. It is indeed gratifying to those of us who hold the criminal to be in need of treatment, to know that the courts of justice all over the United States are establishing psychopathic institutes in which to measure the prisoner before he is tried and to give the results of such measurement to the courts which shall then say what shall be done with the delinquent.

After several years' experience as physician-in-charge of the Indiana State Prison, I have found that the prison physician's chief duty is the treatment of mental and not physical diseases. Here he can be as he has been elsewhere the "eternal proselyter" for reform and progress. By reason of his peculiar training, he is filled with a curiosity to search for the "reason why" in every problem that he encounters. The purpose which led to the writing of this paper was the desire which has come to every criminologist to know, why is the recidivist, what are the factors that produce him? Unless these factors are properly and rightly ascertained, any treatment which we may attempt will be of little avail.

*General Considerations.*—The following data has been gathered from the study of one hundred recidivists, all of whom have been convicted at least four times. These men were studied in the same order as their consecutive numbers occur in the prison records. There was no qualification whatever excepting that each one had been convicted not fewer than four times. It is not, therefore, a selected group. My investigations were confined to the clinical study of the men as they were at the time of examination, and the sociological aspects were not touched. The following table will doubtless be of interest.

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ONE HUNDRED RECIDIVISTS.

Number of convictions .....	697
Number of years served in prison exclusive of time served in jails and workhouses.....	1221
Number admitting the excessive use of alcoholic beverages .....	94
Number professing some form of religion.....	83
*Number admitting having had gonorrhœa.....	74
*Number admitting having had both gonorrhœa and syphilis .....	65
Number admitting history of mental defect in imme- diate family, including insanity, feeble-mindedness, epilepsy and crime .....	56
Number admitting history of tuberculosis in immediate family .....	41
Number of prisoners having had tuberculosis at some time .....	12
Number of prisoners admitting the use of narcotic drugs, such as morphine and cocaine.....	8

\*The occurrence of venereal disease in these men is no doubt much higher than admitted by them.

MENTAL STATUS OF 100 RECIDIVISTS ASCERTAINED BY PSYCHIATRIC  
AND PSYCHOLOGICAL EXAMINATION.

Insane .....	12
Feeble-minded .....	23
Constitutionally inferior .....	38
Psychopaths .....	17
Epileptics .....	10

EDUCATIONAL STATUS OF 100 RECIDIVISTS.

Common school .....	18
Less than common school .....	75
Illiterate .....	7

It is easy to see even from the most superficial glance at these figures that these 100 habitual criminals are defective. This is especially noticeable when we stop to think that seventy-five of them did not even reach the eighth grade and that seven were entirely illiterate. Some objection may be offered against this conclusion, but this is easily overcome by the fact that opportunities for education were good in the majority of these cases. The real cause of the lack

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of education was the inability to assimilate that which was taught them because of mental defect and such physical conditions as poor eyesight, adenoids, defective hearing and a disinclination to study, coupled with a condition of incorrigibility.

At least fifty-six of them bore the burden of some neuropathic taint which bequeathed to them an instability of the nervous system and a sensitized physical economy for the action of degenerative influences.

The majority of the men studied were in a condition of physical insolvency. Seventy-four admitted having had gonorrhœa with the train of symptoms and *sequelae* that follow this dangerous infection, such as gonorrhœal rheumatism, strictures, defective vision and in one instance a heart lesion; 65 of these 74 cases of gonorrhœa had syphilis in addition, the most dread of all diseases to which human flesh is heir. Twenty-five per cent, of all persons in insane hospitals are there due to the direct and remote effects of this disease, which forever blights the person that has felt its sting.

What was the role of alcoholism in these cases? The part it played was that of a contributing factor and not the immediate cause of crime. It served merely to intensify the defect already existing; it weakened already enfeebled volitional powers; it was influential in firing misguided, wild and erratic emotions; it distorted previously inefficient, irrational judgments, in fact, it raised to the nth power all the potential and latent elements for criminality. The same may be said of morphine and other narcotic drugs.

I did not find these prisoners belonging to any distinct anthropological type, but the marks of constitutional inferiority were uniformly present. Among the anatomic defects noticed were malformations of the skull, teeth and palate. The physiologic stigmata were quite uniformly consistent. I found perversions of the sexual instincts, defects of speech and disorders of the nervous system and insensibility to pain. The psychic stigmata were more sharply defined, showing an exaggerated amount of egotism, inability of continuous application to manual work or study, ill-balanced mental activity, moral anesthesia and emotional instability. The esthetic taste was, many times, depraved; tattooing was quite frequent as is common among savages and other people of primitive order.

I will now briefly consider the mental status of the prisoners studied in the order given in the foregoing table.

*Insane Prisoners.*—The twelve men classified under this division had for the basis of their crimes some form of insanity. As

to whether these men were actively insane at the time of the commission of their criminal acts I cannot say—but it is very reasonable to suppose that their insanities must have existed in a latent form at least. Many times crimes and misdemeanors are but expressions of mental disease, and it is a sad commentary on the medical or legal profession that insane individuals are incarcerated in prisons merely because they are suffering with a form of mental disease.

All forms of mental alienation are found among prisoners, but the chief varieties observed among recidivists are dementia precox, paranoia and paranoid states, manic depressive psychosis and hysteria.

“Wilmanns, in a study of 127 vagabonds, found 66 cases of dementia precox.”

The alternate cycles of good behavior and freedom, crime and imprisonment which I have noticed in habitual criminals somewhat resemble the manic depressive psychosis with its intervals of lucidity, separated by periods of depression and excitement. In the period of remission of the cyclic form of criminality the prisoner is exceedingly well behaved and often takes a very active part in the religious services and societies at the prison, and often this individual is thought to have been reformed and that he will become a model citizen. He is sooner or later discharged from prison and he does exceedingly well on his parole for a limited period of time. But shortly our hopes are dashed to the ground, for a second cycle of criminality develops, new crimes are committed and the individual is returned to the prison from whence he came or is sent to some institution in another state. The following is an excellent example of this peculiar phenomenon: Prisoner received at the Indiana State Prison convicted of passing fraudulent check, was classified as insane at the time of admission—was a model prisoner and though a Hebrew, he was exceedingly active in the Protestant Bible Class and professed the Christian religion. After serving his minimum sentence he was paroled and for some length of time he kept his parole obligation very well. He was often pointed out as an example of reformation among prisoners. Very recently it seems that he has developed a new attack of criminality. We have received information from reliable sources that he has passed fraudulent checks in the East, embezzled sums of money ranging from two to three hundred dollars from philanthropic but unsuspecting individuals, tried to consummate a marriage with a daughter of his benefactor although already married, and that he represented himself to be the chaplain of the Indiana State Prison to further help himself in his practice of fraud and embezzlement.

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The paranoiacs form the third class of the insane found in the ranks of the recidivists. They are anti-social, they entertain grievances and delusions of persecution against individuals, society in general or the state; they are especially dangerous because of their shrewdness; their abilities to argue and defend themselves and their powers to deceive even trained physicians render them especially unsafe to others. They temporarily adapt themselves to almost any environment, but sooner or later they enter into periodical conflicts with it. The assassins of prominent men are individuals of this type; their most characteristic crimes are homicides, assaults and various forms of blackmail.

*Feeble-minded Prisoners.*—I classed 23 per cent of the habitual criminals whom I studied as feeble-minded. In the employment of this term I have endeavored to limit its application to those persons who as a group possess "All degrees of mental defect due to arrested or imperfect mental development, as a result of which the person so affected is incapable of competing on equal terms with his normal fellow, or of managing himself or his affairs with ordinary prudence." This, in the language of the American Association for the Study of the Feeble-minded is necessary for the diagnosis of feeble-mindedness.

Various estimates have been made by different physicians and psychologists as to the number of feeble-minded persons in penal and reformatory institutions. This number has varied from 20 to 60% and these apparent differences can be easily understood when we consider the various natures of the institutions giving this data and the general broadness or narrowness of the psychopathological examination given.

Dr. Walter E. Fernald has stated: "At least 25% of the inmates of our penal institutions are mentally defective and belong either to the feeble-minded or to the defective delinquent class."

"At that rate we should have 20,000 such individuals in adult prisons, and 6,000 in juvenile reformatories, making a total of 26,000 defective delinquents in actual custody, not to mention those who have never been arrested and the large number who have been discharged or paroled from institutions and are now at large. There are doubtless as many defective delinquents at large as there are in custody."

The feeble-minded are not in themselves inherently criminal or anti-social. Being easily influenced and unable to control their actions because of their utter defect of perception, reason and judg-



ment, they become the unconscious tools of perverse and anti-social individuals, evil environments and associations. The gross form of feeble-mindedness is easily recognized and its existence is rarely disputed, but the great danger and difficulty lies in the recognition and the proper care for the high-grade feeble-minded persons.

The feeble-minded are subject to attacks of depression and exaltation, and their mental equilibrium being very unstable, the baser elements of their natures assert themselves at such times and this is shown in deeds of violence. Most prostitutes may be classified within the range of feeble-mindedness. The imbeciles seem to be natural liars. The crimes of imbecility are homicides, assaults, rape, petty theft and arson.

*Constitutional Inferiors.*—The largest single group of the habitual criminals that I studied may be classified under the term "constitutional inferior." The term is self-explanatory. While the individual of this group is not feeble-minded in the strict sense of the term, he is below par both mentally and physically. He is unable to stand the strain imposed upon him by the ordinary conventions of society; without assistance he cannot occupy the place that he should in the social order. Indecision, inability, vacillation and dependence are his chief characteristics; he readily takes to every vice that comes across his path, indulges in prostitution, falls an easy victim to the drink and drug habit, his mental operations are slow; his reason and judgment are defective. The constitutional inferiors possess an unsatisfied craving for continual and unusual excitement, and in their impetuous endeavors to secure it they live on the borderline of insanity and criminality, over which they are swept back and forth by the force of tempting circumstances in which they often find themselves; in them the call of the Wanderlust is particularly strong; they travel from place to place and the railroad employees and detectives in particular can testify to this fact; with the coming of warm weather hundreds of them are traversing the continent in search of contentment which leads them in a never-ending chase. Many of them are convicted of petit crimes and a very common one for them to commit is the breaking of box cars to secure food and small plunder.

The treatment to be attempted in this class of cases is the removal of these physical conditions brought about by dissipation and venereal disease, removal from vicious and bad associates, re-education and tactful direction of their thoughts and activities into channels of usefulness. If it were possible to transform their rest-

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lessness and unproductive activity, and if employment could be secured that would in a measure afford them novelty and excitement, their rehabilitation might be expected if it were not for their neuropathic organizations.

*The Psychopaths.*—The class designated as psychopaths form 22% of the total number studied. These are a group of individuals who may be said to be "semi-insane or semi-responsible." The following is a description of the psychopath by Dr. Parker: "In the psychiatric sense he is neither flesh nor fowl, neither sane nor insane, and he is a dangerous individual at every stage. He is bright, responsive, reactive and in varying degree adaptable for certain periods. He is anti-social, either for brief periods or persistently."

They are individuals who display many eccentricities of character and of conduct. But these characteristics seem to be no departure from the individual's usual manner of feeling, thinking and acting, nor are they sufficient to warrant calling the individual who possess them insane. Yet these characteristics in question hinder the efficient adjustment of the individual to his environment. It is noted that insanity is a very frequent development in these cases. They have been graphically described by Regis as follows: "Their lives are one long contradiction between the apparent wealth of means and poverty of results."

Within this class are found the moral imbeciles. "A group of persons of unsound mental temperament who are born with an entire absence of the moral sense, destitute even of the possibility of moral feeling; they are as truly insensible to the moral relations of life, as deficient in this regard as a person who is color-blind is to certain colors, or as one without the ear for music is to the finest harmonies of sound. Although there is usually combined with the absence of moral sensibility more or less weakness of mind, it does happen in some instances that there is a remarkably acute intellect of the cunning type."

I regret very much that the limits of this paper do not permit further discussion of this very interesting type of the recidivists except to state that these unfortunate moral defectives we generally find to be burdened with an evil heredity, a harsh, unrelenting tyranny of ancestral defect. Many of them are ignorant and do not rise above the level of the feeble-minded; in marked contrast, others are highly educated persons who assent to general propositions concerning right and wrong, and frequently delight in discussing moral customs and laws in order to exploit their casuistic and argumentative

powers. But to them the concrete application of moral or legal restraint is a hardship which they cannot understand.

Sexual perverts of the most disgusting type were found among the psychopaths and no small number of them are met with in all penal institutions and they indeed furnish very difficult problems to be solved in those institutions where it is necessary to put more than one prisoner in a cell.

Whether these anomalies of the sexual instinct are always congenital or not, has not been settled and it does seem that inverse and perverse sexual habits can be acquired early in life by the association with vicious and depraved individuals. They are at any rate an exceedingly dangerous and demoralizing class, which should be permanently isolated to prevent their mingling with others. Murder has often been the outcome of sadistic practices.

Eight of the psychopathic type were drug fiends, six of whom used both cocaine and morphine. The prolonged use of these drugs dulls the perception, enfeebles reason and judgment, diminishes the critical sense of the moral qualities of the mind and so makes and cultivates a tendency to crime. The crimes incident to the use of these drugs are all forms of larceny, forgery, blackmail, embezzlement and petty offenses of all sorts.

In three cases studied, the repeated crimes for which the prisoners were convicted were larceny and burglaries performed because of an irresistible craving and suffering for these drugs. The victims of this habit feel many times no desire to steal nor to commit crime except when narcotized. Police surgeon Dr. Guimball, who has had a wide experience with criminal drug habitues, says of the morphinists the following: "First, morphine causes defects of attention, particularly in the realm of sense observations; second, the ethical sense is blurred. The victim is unable to discriminate any moral basis that should dominate; he acts from impulse; third, his will is lost and power of control over his impulses is lessened; both physical and mental impulses dominate him on the slightest excitations; fourth, the morphinist is literally a lunatic only more subtle and concealed; like the dipsomaniac he is liable to be dominated any moment by impulses that are unforeseen; fifth, responsibility, like judgment, is impaired and enfeebled. He is constantly doing acts and saying things, the import of which he does not understand."

*The Epileptics.*—Ten per cent. of the recidivists that I studied belong to this class. This great neurosis is a fruitful source of crime. Many dangerous acts are committed by the epileptic. He

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is, as a rule, conceited and arrogant; he prefers idleness to employment; he seems to possess a morbid propensity for lying. True gratitude to him is an unknown quality and the general signs of mental instability and weakness are the predominant characteristics of his mental make-up. The unfortunate epileptics are most erratic in their judgment and therefore lacking in the same degree in self-control; they are excessively emotional and given to spells of musing and religiosity; they are extremely fond of notoriety and shrewdly use illegal and immoral methods to secure it.

The violent acts of the epileptic are frequently performed during the automatic states preceding or following a convulsion. Such acts seem to be committed in a perfectly conscious and coherent manner, but in reality consciousness is blotted out, and when the individual regains his normal status there is usually no memory for any of the events that occurred during these periods. After the paroxysm we find that the patient is confused, dazed and weak, and this condition is usually followed by a deep sleep.

The condition known as psychial epilepsy is one in which the paroxysm is replaced by a nervous storm, which is not accompanied by the usual signs of epilepsy. "Psychic epileptics may commit all manner of crimes, theft, arson, rape, assaults and homicides; they are not infrequently pyromaniacs entirely without reason or impelled by the flimsiest motives."

This type of the epileptic neurosis must always be considered when some apparently normal person commits an outrageous act without any assignable cause "Murder by an epileptic should be looked on as being as much a symptom of his disease as is larceny by a general parietic."

"The medico-legal aspects of this type of epilepsy depend, as far as responsibility is concerned, upon our ability to determine the existence of the automatic state at a given moment. This may be difficult to do beyond reasonable doubt, though if we can prove that the person is a sufferer from epilepsy at the time, or ever had it in any form, we can always create a reasonable belief that the patient may have acted while in a seizure, without any intent whatever, and under conditions that make him irresponsible.

"The evidence of the presence of epilepsy needs to be carefully studied in order to arrive at a just conclusion in medico-legal cases. If it can be proven beyond a reasonable doubt that the individual is epileptic the question of responsibility is not difficult after that. We may not be able, it is true, to say positively that he was under

the influence of a seizure at the moment an overt act was committed, while on the other hand, we are equally unable to prove that a seizure was not present. Psychic convulsions defy all ordinary methods of detection. They can readily be noted, however, by one trained to observe their mode of expression."

*Conclusion.*—It is evident after the study of these 100 men that crime and its manner of classification has hitherto received more attention than the criminal himself. We have treated the symptoms rather than the cause. The physical and mental abnormalities which have until recently been disregarded, must receive attention. It is evident that punishment has exerted but little, if any, influence upon these 100 prisoners and years of confinement have failed to reform them. The majority have professed some form of religion and many of them are intensely devout; fear, and not love for their Creator has governed their devotions. For them the professions and ceremonies of religions are easy, but the practice of morality in their social duties is well nigh impossible. As regards their religious professions they may be divided into three classes:

1. Those who profess religion to impress their keepers with an idea of reformation to hasten their release from prison.
2. Those who resort to religious exercises and professions of faith, rich in symbolism and ritualism, to secure a moral narcosis.
3. Those who earnestly seek, as far as their warped judgments and emotional instabilities will permit, a real reformation in character.

If the number that I have studied can be taken to be representative of the habitual criminals, and I believe they can, I feel justified in offering the following conclusions:

1. The recidivist is more or less mentally defective. Habitual criminality may be said to be, even after environmental influences have been considered, an expression of a condition of psycho-physical pathology.
2. Because it has been shown by eminent authorities that heredity is the greatest factor in the production of insanity, epilepsy, feeble-mindedness and other neuropathic states, and because these conditions on the whole, when of the degenerative type, respond but little to treatment, the reformation of the chronic offender is a high-sounding illusion.
3. Since the recidivist is more or less mentally defective and a menace to society, and since he is more or less irresponsible, he should receive treatment rather than punishment. It is of course under-

## THE RECIDIVIST

stood that society must be adequately protected from his depredations even though he is lacking in responsibility.

4. No offender of the law should be said to be a defective recidivist until it has been shown by repeated, deliberate and conscientious examinations by qualified psychopathologists; these examinations to take place after the third conviction, except in cases of insanity when the condition and suitable treatment are at once apparent.

5. When it has been found that a person is habitually criminal because of mental defect, he should be kept in custody until his mental status is such that he can be released with safety to himself and to the public.

Our penal institutions are maintained at a tremendous cost, and I do not think the public should be compelled to build separate institutions for the defective delinquent, but our prisons should be so remodeled as to have various departments in which to meet the demands and needs of all classes of violators of the law in the same manner as the modern hospital has, surgical, psychopathic, contagious, venereal, obstetrical and other departments to meet its special needs.

The recidivist should be confined in a department in charge of psychiatrists. Individual prisoners should be studied to ascertain their qualitative and quantitative defectiveness that the proper physical and mental treatment may be given.

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### DISCUSSION.

CHARLES E. SCELETH.<sup>1</sup>

We cannot agree with Dr. Bowers' statement that the crimes of habitual criminal convicts are always manifestations of pathological

<sup>1</sup>Medical Superintendent of the House of Correction and Scelesh Emergency Hospital, Chicago.

conditions, due to defects of cerebral development, or to the retrograde changes of the central nervous system, inherited or acquired.

Doctors Healy and Edith Spalding's study of inheritance as a factor in criminality, in one thousand cases, states that they could find no proof of the existence of hereditary criminalistic traits as such, and class inheritance of these traits as an unsubstantiated metaphysical hypothesis. Again—why the one black sheep in a family of well-behaved sisters and brothers?

We all know that the criminal class in most cases is recruited from the lower strata of society, and their brains possess evidence of less development, irregularity of convolutions and other conditions which are regarded as below normal; but any pathologist will tell you there is absolutely no pathological anatomy of crime in the brain or central nervous system.

Are criminal acts proof of insanity? That is what we are trying to find out. Can we say because this man has committed criminal acts that he must be insane or have a defective mentality? That has not, by any means been worked out. Yet, this is what Dr. Bowers takes as assured. He quotes 100 cases of habitual criminals without a single case that he considers normal. In many instances the abnormalities that he classifies as such, could be applied to any number of cases outside of prison who show no criminal tendencies. Many families that have a history of mental defects, feeble-mindedness, epilepsy, tuberculosis, and even insanity, still have no habitual criminals.

Of course, a great deal depends on what we mean by abnormal—for it can truthfully be stated that there does not exist a man in the whole world who would act normal under every trying condition. For instance:—under starvation; great privation; or in shipwrecks; or again under excitement in mobs. And I believe that if many of us who are classed as normal and are fairly successful in life, were subjected to the same environment and conditions that some of our habitual criminals have to contend with, we would be recidivists today.

Under the history or etiology of these cases, the doctor makes many statements that I am unable to find of any value. For instance:—that 94 of them admitted the use of alcoholic beverages. This does not mean anything definite! If they were chronic alcoholics with the resulting mental and moral degeneration, it would mean something. That 83 per cent of them profess some form of religion, does not make them distinctive. That only 74 of them had gonorrhoea is surprising to me because any G. U. specialist or general practitioner will give from 80 to 90 per cent as an average of such cases outside of prison. Neither can I see any connection between gonorrhoea and criminalistic tendencies. Dr. Bowers says that 65 per cent had syphilis. If their statements are true it would be surprising, to say the least. Evidences of syphilis in the dead bodies of inmates dying in prison are not nearly so high in this country; and our own experience of over 800 autopsies during the past 14 years bears out the statement that 15 per cent is nearer the true figure.

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If we are making any pretense of giving information of the slightest scientific value, unsubstantiated prisoners' statements are of little use, as many of them get a diagnosis of syphilis from their friends, or druggists, or quack physicians, when they only have chancroids. If Dr. Bowers did not have a Wassermann done in each of the hundred cases, his report has not much merit.

The relation of syphilis and alcohol to crime is not proven. That it is more prevalent among criminals than others is to be expected; that syphilitics and alcoholics make poor ancestors we all know. But who has made a scientific demonstration that syphilis and alcoholism are a direct cause of crime? Remember the number who are not criminals.

In our experience general paresis and tabes are not especially prevalent in prisons among the habitual criminals. Our experience is that syphilis is more common among our alcoholics, as very few men acquire syphilis while sober.

In the 56 cases admitting mental defects the immediate family, including insanity, feeble-mindedness, epilepsy and crime, the doctor goes around in a circle. The statement that 41 of the cases had tuberculosis in the family is too vague and too general to be of any value. And that 12 per cent of the prisoners had tuberculosis at one time does not mean anything. We cannot consider tuberculosis as a criminal factor, except that a tubercular case is not so well constituted or equipped to fight for a living, but the same can be said of any physical ailment. And we are saying nothing about the vast number of tubercular cases that are not criminal.

Among the eight cases of drug habitues could we not just as well consider morphinism and alcoholism as a symptom of mental defect in place of a cause?

I cannot see that his educational status differs from the normal non-criminal factory or laboring class. As to the anatomic defects, malformations of the skull, teeth and palate—the old Lombrosian idea—they are all found among non-criminals. Perversions of sexual instincts, in many cases are acquired in prisons as they are in the army, navy and among sailors.

Again the esthetic sense is given as depraved; tattooing being cited by the doctor as an example, as being common among the savages and people of a primitive order. What about sailors? Is tattooing not often a custom with certain classes?

With an average of 2,000 inmates and a moving population of 50 a day, we receive over 30 cases per month in the Chicago House of Correction who are absolutely insane and have to be transferred to the Detention Hospital for trial and commitment to a State Hospital. There are fully twice that number who belong in an asylum, but at the present time they are not considered by the court and jury as insane enough to commit. We believe that there is a greater percentage of mental defectives in prison than out of it, but we should not make any statements that are not absolutely true and we had better underestimate or we will do more harm than good.

We cannot agree that Doctor Bowers has shown that all habitual



CHARLES E. SCELETH

criminals are mental defectives! The matter is not so simple by any means, as the doctor's paper would lead you to suppose. We are only on the threshold of knowledge and it will take years of hard conscientious work to settle some of the questions involved. Suppose that a normal child from normal parents is taken charge of by persons who instruct the child to steal and the child becomes a habitual criminal. Is it a case of mental degeneration or environment?

To my mind this is where Doctor Bowers has made a serious mistake. It must be proven first, that surroundings and environment and adverse conditions of life have nothing to do with crime before we have the right to assume, as the doctor does in his second conclusion, that reformation in the majority of these cases is hopeless.

In his third conclusion, which partly contradicts the second, we certainly agree with him that the habitual criminal should receive treatment directed toward reformation, rather than punishment.

## JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER AND ELMER A. WILCOX.

FEDERAL DECISION RELATING TO THE STERILIZATION LAW IN IOWA.

*Judicial Decision on Criminal Law and Procedure. District Court of the United States, in and for the Southern District of Iowa, Eastern Division.*

Rudolph Davis, Complainant, against William H. Barry, John F. Howe, David C. Mott, James C. Sanders and Austin F. Philpott, Defendants. No. 9-A, Equity. *Opinion.*

George B. Stewart of Fort Madison, Iowa, for complainant; George Cosson of Des Moines, Iowa, Attorney General of Iowa, for defendants.

Before Walter I. Smith, Circuit Judge; John C. Pollock and Smith McPherson, District Judges.

Smith McPherson, District Judge:

The complainant is a prisoner in the Iowa penitentiary. Defendants Berry, Howe and Mott constitute the Iowa Board of Parole; Sanders is the warden, and Philpott is the physician of the penitentiary.

The case is one of diversity of citizenship, with federal questions presented by a bill in equity with an application for temporary injunction to restrain defendants as state officers from enforcing chapter 187 of the acts of the thirty-fifth general assembly (1913), authorizing a surgical operation called vasectomy on idiots, feeble-minded, drunkards, drug-fiends, epileptics, syphilitics, moral and sexual perverts, and mandatory as to criminals who have been twice convicted of a felony.

Complainant has been twice convicted of a felony, one of which was prior to the enactment of the statute in question (and in another state), and the other since (in this state), and for the latter he is now imprisoned. The defendant board of parole in February, 1914, made an order that the operation should be performed upon certain designated prisoners, including the complainant. This action was brought by the complainant for the purpose of enjoining each and every one of the defendants from subjecting him to the operation. Since the action was instituted the board of parole under a written opinion of the attorney general of the state has rescinded its order, and they and the prison physician say they will observe such opinion. The opinion of the attorney general is based upon the proposition that the statute is *ex post facto* if either of the convictions was for an offense committed prior to the enactment of the statute. Complainant's counsel, in argument, conceded the statute is not an *ex post facto* one.

The attorney general was in error when he advised the board of parole that the statute in question is void by reason of it being *ex post facto*, except only as to prisoners who have been twice convicted for felonies committed since the enactment of the statute. The statute under any construction is not an *ex post facto* one. *State of Iowa ex rel. Gregory v. Jones*, 128 Fed. Rep. 626; *Kelly v. People*, 115 Ill. 583 (4 N. E. 644); *Commonwealth v. Graves*, 155 Mass. 163 29 N. E. 579; *Sturtevant v. Commonwealth*, 158 Mass. 598 (33 N. E. 648); *In re Miller*, 68 N. W. 990 (Michigan); *Blackburn v. State*, 50 Ohio State, 428 (36 N. E. 18); *Moore v. State of Missouri*, 159 U. S. 673; Cooley's Constitutional

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Limitations, 7th Ed. 382; *State v. Dowden*, 137 Iowa, 573; *Graham v. West Virginia*, 224 U. S. 616. He is not being subjected to the operation for that which was by him done prior to the enactment of the statute, but because he voluntarily brings himself within a class covered by the statute, and he does this subsequent to the enactment of the statute.

The attorney general also advised the board of parole that the statute should be so construed as to be applicable only to prisoners who have been twice convicted of felonies, committed since the enactment of the statute. Section 26, Article III, of the Iowa constitution, provides that a statute shall take effect July 4th following its enactment, or, if enacted at a special session, then at the expiration of ninety days after adjournment; or, in case of a declared emergency, by the publication thereof. But the attorney general to maintain the proposition that the law is *ex post facto* as applied to one who was convicted the one time prior to the statute is doing violence to the state constitution by contending that the statute would be effective only as to any prisoner many years after its enactment.

The defendant board of parole by rescinding the order subjecting complainant to the surgical operation, and the defendant warden and physician, through the attorney general, now insist that an injunction should not issue because it will serve no purpose. There are two answers to this: Death, resignation, and expiration of terms of office will bring other men into the positions now held by the defendants, who may not entertain the same views as these defendants. The opinion of the attorney general is advisory only and is not at all binding on either these defendants or their successors in office.

Again, the statute in question provides that certain persons may be subjected to the surgical operation; but the latter part of section 1 provides that such operations *shall* be performed upon prisoners who have been twice convicted of a felony, such as the complainant.

It is the duty of an officer to follow the mandates of the statute. Of course, every officer must act at his peril under a statute that another party claims to be unconstitutional and void; but where a person will suffer an irreparable injury if the statute is carried out, the presumption is that such statute will be observed and that an injunction should issue to enjoin the enforcement of a void statute. *Williams v. Boynton*, 147 N. Y. 426 (42 N. E. 184); *Osborne v. Bank*, 9 Wheaton, 739, 840; 2 High on Injunctions (4th Ed.), Section 310.

Complainant in his verified bill alleges that the statute is in violation of the United States constitution in that it is in effect a bill of attainder in that there is to be no indictment or trial; that the statute abridges his privileges, and that he is denied the equal protection of the laws; that he is denied due process of law; that the statute is in conflict with the Iowa constitution in that the statute denies the inalienable right to enjoy life, liberty and to pursue and obtain safety and happiness; that there is no jury trial awarded him, and that the statute provides cruel and unusual punishment.

The case presents important questions. Statutes like this are of recent years, the first one upon the subject enacted less than fifteen years ago. The question has been before appellate courts but twice. In one case, that of *State of Washington v. Feilen*, 126 Pac. Rep. 75 (41 L. R. A., N. S. 418), the statute was upheld. The court held that the punishment was not cruel or unusual in the constitutional sense. That case involved a most heinous offense, that of the ravishment of a

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female child, and the statute provided that in addition to life imprisonment the jury and the court might determine whether he should be subjected to the operation of vasectomy. So that on the question now presented there was due process of law in that the matter was judicially determined. The other case, by the Supreme Court of New Jersey, was that of *Smith v. Board of Examiners*, 88 Atl. Rep. 963. In that case the operation was to be performed upon a woman who was an epileptic, an inmate of a state charitable institution, and that court held that the statute was based upon an unreasonable police regulation and denied to her and persons of her class the equal protection of the laws as guaranteed by the fourteenth amendment.

The sole purpose of the operation is to destroy the power of procreation. The operation as originally performed was that of castration. In the twelfth century Henry II declared it treason for any person to bring over any mandate from the Pope or any one in authority in church affairs. This he made punishable as to secular clergymen by the loss of their eyes and by castration. Goldsmith's History of England, volume 1, page 88. In *Weems v. United States*, 217 U. S. 349, 377, the fact that castration was once inflicted is recognized—and see the case of *Whitton v. Georgia*, 47 Georgia 301.

There is a difference between the operation of castration and vasectomy; castration being physically more severe than the other. But vasectomy in its results is much the coarser and more vulgar. But the purpose and result of the two operations are one and the same.

When Blackstone wrote his Commentaries he did not mention castration as one of the cruel punishments, quite likely for the reason that with the advance of civilization the operation was looked upon as too cruel and was no longer performed. But each operation is to destroy the power of procreation. It is of course to follow the man during the balance of his life. The physical suffering may not be so great, but that is not the only test of cruel punishment; the humiliation, the degradation, the mental suffering are always present and known by all the public and will follow him wheresoever he may go. This belongs to the dark ages.

As of course all persons concede that it would be better for society if some men did not beget children: diseased, deformed, mentally weak children and criminally inclined, are brought into the world, oftentimes to their own shame and against the interest of the public. But are they not at the minimum?

And must the marriage relation be formed under these newly-conceived laws, based upon the brutalities of many centuries since, and be allowed to take the place of the marriage relation formed along the true lines? Must the marriage relation be based and enforced by statute according to the teachings of the farmer in selecting his male animals to be mated with certain female animals only?

It is somewhat difficult to define with precision what is cruel and unusual punishment in the constitutional sense. Usually the length of imprisonment following a conviction is within the discretion of the legislative body, and we have an extreme case in *O'Neil v. Vermont*, 144 U. S. 323, in which the judgment of the lower court was affirmed and the statute upheld. But quite a per cent of the bar of the country are of the opinion that the dissenting opinion by Justice Field (concurring in by Justices Brewer and Harlan) was the stronger.

No doubt delegates to the conventions, in providing against cruel punish-

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ment, had largely in mind what Blackstone had then recently written in volume 4, page 376, such as being drawn or dragged to the place of execution, emboweling alive, cutting off the hands or ears, branding on the face or hand, slitting the nostrils, placing the prisoner in the pillory, the ducking, the rack, and the torture, and, as in Spanish countries, crucifying. In a very few states of the Union the whipping post has been retained as a constitutional mode of punishment. But it will be found that the courts in those states have construed the statute thus imposing such punishment in the light of their history, and what had been done and was being done at the time of the adoption of their constitution. No one can doubt but that under our present civilization if castration were to be adopted as a mode of punishment for any crime, all minds would so revolt that all courts, without hesitation, would declare it to be a cruel and unusual punishment. As we understand it, castration was never inflicted after the revolution of 1688. So that if, as some now contend, it is now competent for a legislature to impose such punishment as existed by the common law, the validity of the statute providing for castration could not be upheld, because that punishment was one imposed back of the time of the common law as, generally speaking, it comes down to us. In *O'Neil v. Vermont*, 144 U. S. 323, and *Weems v. United States*, 217 U. S. 349, and *In re Kemler*, 136 U. S. 436, all phases of the question are so presented as to leave nothing further to be said.

While it is true that there are differences between the two operations of castration and vasectomy, and while it is true that the effect upon the man would be different in several respects, yet the fact remains that the purpose and the same shame and humiliation and degradation and mental torture are the same in one case as in the other. And our conclusion is that the infliction of this penalty is in violation of the constitution, which provides that cruel and unusual punishment shall not be inflicted.

This statute not only allows but commands the operation of vasectomy to be performed upon all twice convicted of a felony. A felony in Iowa is not only murder, arson, rape, counterfeiting, and other serious crimes known as felonies at the common law, but they have been much extended under the Iowa statute, and some things are now felonies which until recently were misdemeanors with trials before a justice of the peace, or else no crime at all; wife abandonment, cutting electric light wires, breaking an electric globe, obstructing highway, unfastening a strap in a harness, and other things. So that if a person commits two or more of these, he is to be subjected to the operation if this statute is enforced.

And it is of no importance in argument whether the prison physician does this on his own motion or under an order of the state board of parole. The hearing is by an administrative board or officer. There is no actual hearing. There is no evidence. The proceedings are private. The public does not know what is being done until it is done. Witnesses are not produced, or if produced, they are not cross-examined. What records are examined is not known. The prisoner is not advised of the proceedings until ordered to submit to the operation. And yet in many cases there will be involved a serious controverted question of fact. The records of two convictions may show the same name of the party or parties convicted; but there are many men of the same name, but which is no proof that the person in the one case is the same person convicted in the other case. It is common knowledge that many prisoners take assumed

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names. Who is to determine whether the various names represent one and the same person? And if one of the convictions was in another state, the question will arise whether it was for a felony. These are inquiries that must be held in the open, with full opportunities to present evidence and argument for and against. To uphold this statute it must be affirmed that the board of parole or prison physician must hear the evidence and examine laws of other states without notice and in the prisoner's absence and determine these questions. And if determined adversely, the prisoner has no remedy but must submit to the operation.

In the case at bar, the hearing was a private hearing, and the prisoner first knew of it when advised of the order. Due process of law means that every person must have his day in court, and this is as old as magna charta; that some time in the proceedings he must be confronted by his accuser and given a public hearing. Or as was stated in *Leeper v. Texas*, 139 U. S. 462:

"Law in its regular course of administration through courts of justice is due process, and when secured by the law of the state the constitutional requirement is satisfied."

Under the habitual criminal laws of the state, if a prior conviction is relied on, the same must be pleaded and established by the evidence. But we have cases, this one included, in which the prior conviction has not been judicially established. But in *Hayes v. Missouri*, 120 U. S. 68, it was said that due process of law and the equal protection of the laws was secured if the laws operated on all alike and that all persons subject to the laws are treated alike under the limitations imposed. And the same holding was made in *Duncan v. Missouri*, 152 U. S. 377. The cases are numerous and without conflict as to such holdings and further citations need not be made.

But assuming that the prior convictions all appear of record, and assuming there is no conflict in the testimony and no difficulty in reaching the conclusion, but little or no advance is made in determining the question. If it be said that the statute automatically decides the question and nothing remains for the prison physician to do but to execute that which is already of record, then the statute becomes a bill of attainder. One of the rights of every man of sound mind is to enter into the marriage relation. Such is one of his civil rights, and deprivation or suspension of any civil right for past conduct is punishment for such conduct, and this fulfills the definition of a bill of attainder, because a bill of attainder is a legislative act which inflicts punishment without a jury trial, as is fully discussed and held in the case of *Cummings v. Missouri*, 71 U. S. 277, *The Federalist*, No. 44, by Madison; Justice Samuel F. Miller on the Constitution, 584; Watson on the Constitution, 733-738.

We hold the statute to be void, and unite in holding that a temporary writ of injunction should be issued as prayed.  
Keokuk, Iowa, June 24, 1914.

SMITH, Circuit Judge, Concurring.

The foregoing opinion is supported by a wealth of historical and other references and I do not wish to dissent from any portion of it. But the Iowa law does not provide for a judicial investigation of the identity of the prisoner with the one previously convicted of a felony, as did the law in Washington, construed in *State v. Feilen*, referred to in the foregoing opinion. The fourteenth amendment to the Federal Constitution provides that no state shall

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deprive any person of life, liberty or property without due process of law. It seems so manifest to me that the law which provides that such operation (vasectomy or ligation of the Fallopian tubes) shall be performed by the physician of the institution or one selected by him upon any convict or inmate who has twice been convicted of a felony deprives the party in question of due process of law that it can scarcely be discussed. Suppose a person had been twice convicted of a felony and has served his entire time and should subsequently be an inmate of the penitentiary unconvicted of any crime, but simply held there for safe keeping, this law in its strictness would require the prison physician to perform the operation upon him in person or by some person selected by such physician. It seems to me that the victim of this operation is so clearly deprived under this statute of the process of law that an injunction must issue, and I therefore express no opinion upon the other interesting questions presented.

### ORDER BY JUDGES.

The order by Judges McPherson, Smith and Pollock is as follows:

In the District Court of the United States in, and for the southern district of Iowa, eastern division.

Rudolph Davis, complainant, against William H. Berry, John F. Howe, David C. Mott, James C. Sanders and Austin F. Philpott, defendants—No. 9-A, equity.—Order.

"This case was heretofore presented by an application of complainant for a temporary injunction. Thereupon the resident judge of said court by written order designated Walter I. Smith, one of the United States circuit judges for this the Eighth Circuit, and John C. Pollock, the United States district judge for the District of Kansas, to sit with and assist him in the determination of said application for a temporary injunction herein.

"After said designations had been made and made of record herein, the said application came on for hearing in open court at Keokuk, Iowa, viz., April 17, 1914, the complainant appearing by George B. Stewart, Esq., his solicitor, and the said defendants all appearing by George Cosson, Esq., attorney general of Iowa.

"And after full argument the said application was fully submitted on the said application and the pleadings and was by the court taken under advisement.

"And now at this time the court being fully advised, files a written opinion herein with a concurring opinion, each and both of which are now ordered of record and made a part hereof.

"And it is further ordered that a temporary writ of injunction issue under the seal of this court restraining and enjoining the said William H. Berry, John F. Howe and David C. Mott, members of and composing the Iowa state board of parole, James C. Sanders, the warden of the Iowa State penitentiary, at Fort Madison, Iowa, and Austin F. Philpott, the physician of said penitentiary, and the successors in office of each and every of said officers aforesaid from performing the operation of vasectomy on the said complainant, the Iowa statute, chapter 187, acts of the 35 general assembly, laws of Iowa, being unconstitutional, null and void.

"And this order and the whole thereof will be and remain in full force until final hearing.

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"Witness our official signatures this June 24, A. D. 1914.

(Signed) "WALTER I. SMITH, United States Circuit Judge.

"JOHN C. POLLOCK, United States District Judge.

"SMITH MCPHERSON, United States District Judge."

### AN ITALIAN DECISION ON A WOMAN'S SUIT TO PRACTICE LAW.

Considerable criticism has fallen upon the Supreme Court of Italy for its recent decision in the case of Teresa Labriola, who had sued for the right to practice law. The decision is called grammatically correct, but totally out of harmony with modern progressive ideas of law, no less than of women. Unfortunately the decision, while extremely learned and well argued, took on too much of the nature of polemic. It begins with noting that the repeated movement in Parliament for the admission of women to the bar indicates the common understanding that women are not admissible, and that they are held both in public and private law to occupy a position inferior to that of men; hence that they are excluded from holding any public office. Now the profession of the lawyer is, by its very nature and by definite construction of the law regulating the practice of the lawyer, distinctly a species of public office. And the right to practice law falls within that class and sphere of rights which for the very existence of civil society must be expressly conferred by law. This, of course, disposes of the plaintiff's contention that the law of 1874 regulating the practice of law is silent on the subject of admitting women to the bar, or that at least it nowhere prohibits their admission. No express prohibition was necessary. On the other hand, an express inclusion must have been made if such peculiar rights were to be conferred upon women. Other countries have found it necessary to pass special legislation for extending these rights to women (among them Sweden, Norway, Finland, Denmark, Iceland, Holland, Switzerland and the United States); for in general the spirit of the *jus commune* excluded them. The court goes out of its way to explain that its decision is based not on the common tradition of a law of force, nor on the supposed physical and mental inferiority of woman, nor on the egoism of men, nor on economic rivalry, but simply and solely on the positive law of 1874. The *Rivista Penale*, in reporting this decision, is inclined to believe that the court might have "made" law to good purpose here by a little broader construction of the statute in question. (*Rivista Penale*, Sept., 1913.)

A. J. T.

### Italian Appeal Dismissed—Not Definitive.

Ugo Conti, Professor in the University of Cagliari, has published a pamphlet, *Decisioni Penali Definitive E non Definitiv* (Vallerti Milan, 1913), in which he discusses the decision of the Court of Cassation, in holding that no appeal can be taken from anything of an interlocutory order. In this case, the lower court remanded a case to a magistrate for the correction of a material error, where no final judgment had been entered. From such order the defendants appealed. The appeal was dismissed on the grounds that the order was not definitive. The refusal of such order prior to sentence resulted in much needless formality. "We believe that the said exclusion of immediate appeal from every order, and thus from those which deal with penal procedural relations, entails, necessarily, dangerous freedom to caprice. Hence, the need of the most careful and accurate interpretation of the statutes.

J. L.



## JUDICIAL DECISIONS

Relating to the employment of children in Brussels, certain of the decisions of the Eighth Court of Justice of Brussels are published in the *Revue de Droit Penal et de Criminologie*, Vol. 7, No. 2, Nov., 1913 (p. 739 to p. 742). Of these two, which concern the employment of children in dangerous and unhealthy establishments, are of interest.

I. The manager of a factory having among his powers the engagement of workmen, the signing of their contracts and the control of all the employees, is responsible for any violation of the law of the 13th of December, 1889. Consequently the employment of children under 12 years of age, and of making children of 14 work outside the hours decreed by the law involves his responsibility.

Prosecution can be instituted for direct complicity even when the chief offender has been acquitted.

On the 7th of July the Eighth Court of Brussels decided, on an appeal, against a first judgment which condemned the manager of a factory for having co-operated directly and knowingly with the general director in employing two children under twelve years and making them work before 5 o'clock in the morning and after 5 o'clock in the evening.

Though the general director had been acquitted the Court of Appeal maintained the penalties pronounced by the first Judge and the appellant was condemned to pay the costs of the second trial.

II. The second decision concerns the obligation of factory directors.

According to the law of the 13th of December, 1889, the director of an unhealthy or dangerous factory must oversee personally that children under 12 are not employed in the work. The fact of entrusting this work to a subordinate who does not respect the law involves his own responsibility.

According to these dispositions, the Eighth Court of Justice accepted the appeal of the prosecuting magistrate against a first judgment which acquitted the director of a factory, guilty of having let a subordinate engage three children under twelve. Upon the consideration that the director ought to have controlled the actions of his subordinates and that by his carelessness he rendered possible the violation of the law, the Court of Appeals unanimously reversed the first judgment and condemned the director to pay two fines of 26 francs each and the costs of the second trial.

JEAN WEIDENSALL, Reformatory for Women, Bedford Hills, N. Y.

### CONFESSION.

*Johnson v. State*, Miss. 65 So. 218. *Improper Influence*. The defendant had been accused of murder and was confined in jail. He was sick with fever and afraid he would be lynched. A newspaper man, who had prior experience in securing confessions, visited him three times, urging him to confess. He told the defendant there was no doubt about his guilt, that he had not slept since he killed that boy and would have no peace until he confessed; he asked what church the defendant belonged to and said he had better look beyond the grave for comfort, and that his only hope was salvation. He said to the defendant, "I am a spiritualist and I can look down into your black heart and see this diabolical crime you committed the other night." Held by the majority of the court that in view of all the circumstances attending the confession it was not of such free and voluntary character that would render it admissible. The

## JUDICIAL DECISIONS

Chief Justice dissented upon the ground that invoking the terrors of punishment based upon theological belief and holding out hope of a spiritual nature would not make a confession thereby obtained incompetent.

### CONSTITUTIONAL LAW.

*Coomer v. United States*, 213 Fed. 1. *Test of Obscenity*. Criminal Code, Sec. 211, making obscene matter nonmailable, and prescribing the punishment for depositing it for mailing or delivery, is not invalid as failing to provide any test of obscenity or of guilt, thereby denying due process of law, the equal protection of the laws, and the guaranty against *ex post facto* laws.

### CORPORATIONS.

*State v. Ice & Fuel Co.*, N. C., 81 S. E. 737. *Criminally Liable for False Pretense*. The defendant's agents, acting for it, sold and delivered a quantity of coke which they represented to be a ton, and they collected \$5.00 for it, which was the price of a ton. The prosecutor later found that it weighed only 1,750 pounds. The corporation was indicted and convicted of obtaining money by false pretenses. An exception was taken on the ground that a corporation cannot be convicted of a crime which requires intent. Held that in view of the transactions of every kind now carried on by corporations, it would nullify many criminal statutes if they were not applied to corporations. While the statute imposed a penalty of a fine or imprisonment, only the fine could be imposed upon the corporation. But the corporation should not be fully exempt because it could not be imprisoned. The officer or agent who conducted the criminal transaction should be indicted, with the corporation as a co-principal or accessory, as the case may be.

### CRIMINAL CONTEMPT.

*Gompers v. United States*, 34 Sup. Ct. Repr. 693. *Statute of Limitations*. Proceedings to punish acts not committed in the presence of the court as criminal contempts of an injunction previously granted are none the less governed by the three years' limitation of U. S. Rev. Stat. Sec. 1044, which provides that "no person shall be prosecuted, tried or punished for any offense not capital \* \* \* unless that indictment is found or the information is instituted within three years next after such offense shall have been committed," because such contempt proceedings may not be instituted by an indictment or information.

### EMBEZZLEMENT.

*Barr v. State*, Ala. App., 65 So. 197. *Proceeds of Illegal Transaction*. A statute rendered null and void all contracts with foreign corporations, unless the conditions authorizing them to do business in the state had first been complied with. It also made any corporation violating the act, or its agent, servant or officer, liable to criminal punishment. The defendant, acting as agent for a foreign corporation which had not complied with the conditions, sold an automobile for it within the state, collected the proceeds and embezzled them. The indictment charged that as an agent he had embezzled money which came into his possession by virtue of his employment. Held that while the statute prevented any enforceable contract obligation from arising out of the unlawful sale, the ownership of the money received was not changed or destroyed, nor was the capacity in which it was held by the defendant different from that of an agent or bailee holding for another. The illegality did not make the entire transaction such a nonentity that the law could take no cognizance of it for any purpose.

## JUDICIAL DECISIONS

The statute relating to the embezzlement by agents does not require that the money embezzled be the property of the principal. An agent's principal may himself be the agent or bailee of the owner of the property. Hence every fact necessary to bring the case under the statute relating to embezzlement by agents of money coming into their possession by virtue of their employment existed, and the conviction was proper.

### ERROR WITHOUT PREJUDICE.

*Beiser v. State*, Ala. App., 65 So. 312. *Exclusion of Evidence*. The state had proved that the defendant went away shortly after the crime with which he was charged was committed. Evidently for the purpose of showing that the trip was contemplated before that time and hence not due to an effort to escape from prosecution, the defendant's counsel asked whether the defendant had previously said he was going away. The trial court sustained an objection to the question. The bill of exceptions did not state that the defendant informed the court whether he expected an affirmative or negative reply. As the negative reply would have been prejudicial to the defense, the record does not show that the exclusion deprived the defendant of favorable testimony. It is not made to appear that the result of the action of the court in sustaining the state's objection to the question was to deprive the appellant of the opportunity of introducing testimony that would have been favorable to him. It is not prejudicial error to sustain an objection to a question a responsive answer to which may be either favorable or unfavorable to the party asking it, when the court is not informed, either by the question itself or in any other way, of the kind of answer which is expected.

### EVIDENCE.

*People v. Pfanschmidt*, Ill. 104 N. E. 804. *Trailing by Bloodhounds*. While a bloodhound may be used to track and run down a known fugitive from justice, where the offender is known and it can be determined whether the bloodhound is trailing the right person, evidence of the actions of a bloodhound who was trailing an unknown criminal should not be admitted to establish guilt.

Where it was claimed that the murderer drove away in a buggy drawn by a team of horses, evidence that a bloodhound, put on the trail some thirty hours later, and carried most of the way in an automobile, followed the trail until it ended in accused's stable, where the bloodhound picked out the particular horse he had been trailing, was inadmissible.

### FALSE PRETENSES.

*State v. Ice & Fuel Co.*, N. C., 81 S. E. 737, Affd., 81 S. E. 956. *Prosecutor's Belief*. The prosecutor suspected the defendant was giving short weight. To test the matter he ordered a ton of coke and paid for it when the coke was delivered. He previously had found that the defendant had given him short weight on several occasions, and strongly suspected that he had not received a full ton when he paid for this coke, but was not positive until he weighed it later and found there was only 1,750 pounds. The defendant contended that the prosecutor was not deceived by the representation that there was a ton. Held that the prosecutor could rely upon the representation in spite of his suspicions until he found by weighing the coke that it was not a full ton. The fact that the prosecutor laid a trap for the defendant is immaterial, as he did not induce the defendant to commit the crime but merely furnished the opportunity, and the defendant acted at its own volition.

## JUDICIAL DECISIONS

### FORGERY.

*Moore v. State*, Miss., 65 So. 126. *Invalid Instrument*. The defendant forged what purported to be a report of the public school signed by his daughter as assistant teacher, and approved by the trustees of the school, and delivered it to the county superintendent of public instruction. On the receipt of the certificate the superintendent issued a pay certificate to the defendant, who obtained thereon \$25.00. His daughter had not taught the length of time set out in the report, and was not a regularly elected teacher of that school. By statute the superintendent could issue pay certificates to only those who had been regularly elected. The defendant was convicted and sentenced to ten years in the penitentiary. Held that if the forged report had in fact been made by the teacher and certified to by the trustees, it would have given no authority to pay anyone for having taught the school, hence the instrument was not within the protection of the statute relating to forgery. That a pay certificate was in fact issued was immaterial. The conviction was reversed and the defendant discharged.

### FORMER JEOPARDY.

*Gustin v. State*, Ala. App., 65 So. 302. *Acquittal in Municipal Court*. Defendant was prosecuted in the County Court for violation of the state statute prohibiting the sale of intoxicating liquors. While the prosecution was pending, a new prosecution was brought against him in a Municipal Court, for the violation of a city ordinance prohibiting such sale, and he was tried and acquitted. A statute provided that an acquittal for the violation of a municipal ordinance should bar a prosecution in the State Court for a misdemeanor based on the same act. Held that the statute does not apply to cases where the State Court first acquires jurisdiction of the offence, as "the jurisdiction depends upon the state of affairs at the time it was invoked, and if the jurisdiction once attaches to the person and subject matter of the litigation, the subsequent happening of events, though they are of such a character as would have prevented the jurisdiction from attaching in the first instance, will not operate to oust jurisdiction already attached." The defendant should have pleaded the pendency of the prosecution in the State Court as a bar to the proceedings in the City Court. The conviction was affirmed. It is difficult to see how the question of jurisdiction was involved in this case. The State Court clearly had jurisdiction of the person and subject matter. The plea of former jeopardy did not challenge the jurisdiction of the court, but merely interposed a defence against the prosecution. A defence arising while the prosecution is pending is usually available at the trial, if within the scope of the pleadings.

### HOMICIDE.

*Clements v. State*, Ga., 81 S. E. 1117. *Cause of Death*. The defendant, after a slight quarrel, shot at the deceased, wounding in the leg near the knee and in the hands. The wound was not mortal and would not of itself have caused death, but nine ten days later blood poisoning developed, from which the deceased died. Held that the shooting was the legal cause of the death. The conviction of murder was affirmed.

### INDICTMENT AND INFORMATION.

*Busby v. State*, Ala. App., 65 So. 307. *Allegation of Time*. The complaint upon which defendant was convicted of the illegal sale of intoxicating liquors alleged that the sale was made "within the last twelve months," but did not

## JUDICIAL DECISIONS

state any specific date. A demurrer upon the grounds that the affidavit did not show that the offense charged was committed within twelve months next before the date of making said affidavit, nor that the offense charged was committed before the making of the affidavit, was overruled. Held that the complaint was sufficient. The conviction was affirmed.

### INSURRECTION.

*State v. Scott*, N. J., 90 Atl. 235. One who attacks in a newspaper the actions of the police in suppressing a strike, but does not attack the governmental system, or all governments, is not guilty of a violation of Crimes Act, Sec. 5, Par. e, denouncing the offense of encouraging hostility to any and all government, the statute being directed against anarchy, as shown by the use of the expression "any and all government," which can not be separated so as to include hostility to particular administrations, for that would preclude freedom of speech.

### INSTRUCTIONS.

*State v. Hessenius*, Ia., 146 N. W. 58. *Failure to Request*. On a trial for murder the theory of the state was that the defendant had choked the deceased to death, that of the defense was that the deceased had been killed by an accidental fall. There was substantial evidence to support both theories. The court did not instruct the jury upon the theory of the defense. The defense requested certain instructions, but asked for none upon this point. The court, following *State v. Lightfoot*, 107 Ia. 344, 78 N. W. 41, and apparently overruling *State v. O'Hagan*, 38 Ia. 506, held that in the absence of a request to charge upon the theory of the defense, failure to do so was not reversible error.

### LARCENY.

*Harris v. State*, Ind., 104 N. E. 969. It is not essential to constitute larceny that the taking be for the purpose of gain to the thief if it deprive the owner of his property, so that an indictment charging the theft of a check need not allege that accused cashed the check or presented it for payment, and was not bad because the check, which was payable to the order of a third person could not have been cashed by accused.

### POST OFFICE.

*United States v. Foster*, 34 Sup. Ct. Repr. 666. The authority of the postmaster general under U. S. Rev. Stat., Sec. 161, to make regulations not inconsistent with law for the government of his department, and the conduct of its officers and clerks, includes the power to prescribe that, in determining the gross receipts of a post office, upon which, under the act of March 3, 1883, the salary of the postmaster is to be fixed, stamps sold in large or unusual quantities, to be used in mailing matter at other postoffices, will not be included, and to require the postmaster to ascertain and report the intention of the purchaser of stamps or stamped paper in large or unusual quantities, such regulations being purely administrative of the law, which manifestly intends that the gross receipts from lawful sales only are to be the measure of the postmaster's salary, excluding receipts growing out of violations of the Federal Criminal Code, Sec. 208, making criminal unlawfully induced sales outside of the delivery of the office, and sales otherwise than as provided by law or the regulation of the postoffice department.

## JUDICIAL DECISIONS

### REASONABLE DOUBT.

*People v. Hansen*, Ill., 104 N. E. 1069. *Necessity of Definition.* The meaning of the term "reasonable doubt" is commonly known and understood, and an instruction defining it need not be given.

### RECEIVING STOLEN GOODS.

*State v. Golt*, Del., 90 Atl. 83. *Constructive Concealment.* While defendants are not guilty of receiving or concealing stolen money merely because of the thief, without their assent, acquiescence or participation, burying it on their premises, yet they, knowing thereof, or from facts with which they are conversant being reasonably chargeable with further concealment or preventing discovery of it, may be held constructively to have concealed it.

### SECOND OFFENDERS.

*Carlesi v. People of the State of New York*, 34 Sup. Ct. Repr. 576. *Effect of President's Pardon on Prior Conviction.* No rights under the Federal Constitution are infringed by the provisions of the N. Y. Penal Law, Sec. 1941, under which a person committing a crime against the laws of that state may be punished as a second offender because of a prior conviction of an offense against the United States, notwithstanding a pardon granted by the President of the United States after the convict had completed his term of imprisonment under such prior conviction.

### TRIAL.

*Smith v. State*, Ga. App., 81 S. E. 801. *Improper Argument.* While the defendant's attorney was arguing the case to the jury, he stated that the defendant had never been arrested and had never had a case against him in the courts before. The prosecuting attorney objected to this, as the defendant's character had never been put in evidence, and "in fact the defendant's counsel knew that the statement was untrue, and that the defendant had in fact served a term in the penitentiary." The defendant's counsel immediately moved the court to declare a mistrial on account of this statement. Held that the motion should have been granted. The improper argument of the defendant's counsel does not justify the prosecution in violating the rules prohibiting statements of facts not in evidence. While the state's evidence clearly established the defendant's guilt, this evidence was contradicted by the defendant's statement and he was entitled to have that statement considered by the jury, without improper comment by the prosecuting attorney tending to destroy his credibility.

### TRIAL.

*People v. Howard*, Mich., 146 N. W. 315. *Improper Argument.* The trial court charged that the jury must convict of assault with intent to do great bodily harm, and refused to charge that they could find the defendant guilty of assault and battery or not guilty. The defendant's attorney, in arguing the case, asked the jury to disregard the instructions of the court. Held that upon the evidence the instruction given by the court was erroneous, and it should have given the instructions refused. But it was the duty of the jury to follow the direction of the court as to the law of the case, and it was the duty of counsel to acquiesce during the trial in the ruling and the instructions. The rights of his client could be protected by exceptions. "The argument was unprofessional and outrageous, and merited immediate discipline at the hands of the trial court." Because of the error in the instructions the conviction was reversed.

## NOTES ON CURRENT AND RECENT EVENTS.

### COURTS—LAWS.

**Proposed Mode of Parole in Louisiana.**—An Act to establish a mode by which prisoners sentenced to an indeterminate sentence may be paroled and in order to carry out the provisions of this Act to create a Board of Parole and to define the powers and duties of said Board.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That there is hereby created a Board of Parole which shall consist of three members to be appointed by the Governor, in which said Board shall be lodged the power to determine when and under what circumstances a prisoner sentenced to an indeterminate sentence shall be paroled.

Section 2. Be it further enacted, etc., That said Board shall, within thirty days after the adoption of this Act, meet and organize and elect one of its members President, choose a Secretary, who need not be a member of said Board, and with the approval of the Governor appoint a Parole Officer for each Congressional District of the State, and adopt a uniform system for the marking of prisoners by means of which shall be determined the number of marks or credits to be earned by each prisoner as a condition of release on parole, and such other regulations as may be necessary for the carrying out of this Act, which system so adopted shall, however, be subject to revision by the Board from time to time.

Section 3. Be it further enacted, etc., That each prisoner sentenced to an indeterminate sentence may, a month prior to the expiration of the minimum term of his sentence, make application to the Board in writing and in such form as the Board may prescribe for his release upon parole; provided that if deemed suitable by the Board, the Board may in any particular case dispense with this rule.

Section 4. Be it further enacted, etc., That it shall be the duty of said Board of Parole, immediately upon the filing of said application, to enter into an investigation of the conduct of said prisoner during his term of imprisonment, and if upon investigation it shall be found that the prisoner has, under the rules and regulations of said Board of Parole, become entitled to discharge from imprisonment upon parole, this Board shall order the release of said prisoner from imprisonment at the expiration of the minimum term fixed in the sentence; provided, that should said prisoner's conduct not have been such as to entitle him to discharge, the Board may, in its discretion, at any subsequent period not less than six months, investigate into the conduct of said prisoner since the date at which his parole was refused, and if, in the opinion of said Board, said prisoner's conduct has, during said period, been such as to entitle him to be discharged on parole, said Board shall order such discharge. Otherwise, said prisoner shall be required to serve the maximum period of imprisonment fixed in the sentence, subject to commutation for good behavior.

Section 5. Be it further enacted, etc., That whenever a prisoner shall have been paroled, his parole shall expire only with the expiration of the maximum term of imprisonment fixed in the sentence, unless the Board of Parole shall, in its discretion, reduce the term thereof, and, upon being paroled, every prisoner shall be required to promise that he will keep the peace and be of good behavior

## PAYMENT OF PRISONERS IN LOUISIANA

until the expiration of his parole, and should any person, after his release on parole, be charged with any violation of the same, he shall be arrested by the Sheriff and brought before the District Court in the parish in which such violation is charged to have taken place; and if, upon the trial of said charge the court shall decide that the paroled prisoner has in fact violated his parole, the court shall remand him to the Penitentiary from which he was paroled, there to serve out the whole time for which his parole was given, subject to the deduction of the time which he had served prior to his parole and to any commutation for good behavior that he shall thereafter earn.

Section 6. Be it further enacted, etc., That every paroled prisoner shall upon his being discharged upon parole be furnished with serviceable suit of clothes, with transportation to such place as he may elect to go within the State of Louisiana, and five dollars in money.

Section 7. Be it further enacted, etc., That all the expenses incident to the carrying out of this law shall be paid out of the Penitentiary Fund.

Section 8. Be it further enacted, etc., That all laws or parts of laws contrary to or in conflict with the provisions of this Act be and the same are hereby repealed.—Senate Bill No. 71. W. I. Hart, New Orleans.

**Recently Enacted Indeterminate Sentence Law for Louisiana.**—An Act to provide for the imposition of an indeterminate sentence upon persons sentenced to imprisonment in the State Penitentiary at hard labor otherwise than for life.

Be it enacted by the General Assembly of the State of Louisiana, That whenever any person shall, after the adoption of this Act, be sentenced to imprisonment in the State Penitentiary or at hard labor, otherwise than for life, or where the maximum penalty does not exceed one year, it shall be the duty of the District Judge to sentence such person to an indeterminate sentence, the minimum of which sentence shall not be less than the minimum term of imprisonment fixed by the statute under which such person shall have been convicted, and the maximum not more than the maximum fixed in such statute; provided that where no minimum term is fixed in such statutes said minimum term shall be taken and intended as being one year.—Senate Bill No. 72. W. I. Hart.

**Proposed Payment of Prisoners in Louisiana.**—An Act to authorize the Board of Control of the State Penitentiary in its discretion to provide pecuniary assistance to prisoners and their families.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the Board of Control of the State Penitentiary be, and it is hereby authorized and empowered to provide for the payment of prisoners confined in the Penitentiary or on State Farms; or in any State Reformatory, such portion not less than twenty per cent. of the earnings of said prisoners, as it may deem proper, under such rules and regulations as it may prescribe. Such earnings shall be paid out of the appropriations hereinafter made.

Section 2. Be it further enacted, etc., That any moneys arising under Section 1 of this Act may be used for the benefit of the family or dependents of the prisoner, under such regulations as the Board may prescribe; but, no payment shall be made to any prisoner until the time of his discharge or release on parole, and shall be estimated at so much per day, or so much percentage of the amount earned for the State by the prisoner, as the Board may determine. And the Board shall keep an account of each prisoner, showing what he would be entitled to under the terms of this Act, and under the rules adopted by the Board.



## LONGHI ON ATTEMPTED ABORTION

Section 3. Be it further enacted, etc., That in order to carry out the provisions of this Act, there is hereby appropriated out of the General Fund for the year 1915 the sum of Five Thousand Dollars, and for year 1916 the sum of Five Thousand Dollars.—W. I. Hart.

**Public Defender in Alessandria.**—This Piedmontese city has the unique distinction of having the only "public defender" in Italy. A ministerial order of Feb. 23, 1913, redefining the duties and privileges of this office, brings to light its interesting history. The Abbe Cesare Ferrufino, jurisconsult, left by will and codicil in 1669-70 a foundation for the purpose of providing free defense for "pious works" and for the poor of the city of Alessandria and its vicinity. Also the foundation required readings or lectures on the institutes of civil and canonical law. The Officials for carrying out the purposes of the foundation were two in number, an *avvocato* and a *procuratore dei poveri*, to be chosen by the College of Doctors of the city from among the secular clergy (other things being equal, from those of Alessandria itself). The College accepted its task and for a considerable time seems to have carried out faithfully the wishes of the testator. But after the suppression of the College in the second half of the eighteenth century the royal government took over the function of nominating the officers, taking no account of the origin of the foundation nor the sacerdotalism involved. The duty of lecturing on law also fell into desuetude. The officers were henceforward considered as real public officials and in addition to the income from the foundation were allotted a stipend from public funds. This public character of the foundation was recognized by the Piedmontese Council of State in 1849, and by law in 1865. The recent ministerial order reaffirms its public character and integrates the office with the general administrative system. The *avvocato* and *procuratore dei poveri* are to be appointed by royal decree upon nomination of the Minister of Justice. The *avvocato* must give free consultations to the poor in both civil and criminal matters, cases relating to contracts, to conditional liberation, to complaints, etc. He may demand from applicants certificates showing their inability to pay. He cannot accept from his clients either money or other things, even if they are offered spontaneously. Cases may be assigned to him or removed to other defenders by the *Commissione del gratuito patrocinio*, which corresponds somewhat roughly to our Legal Aid Associations. (*Rivista Penale*, July, 1913.)

A. J. T.

**Longhi on Attempted Abortion.**—Silvio Longhi has an article in the Jan.-Feb. number of *Il Progresso del Diritto Criminale* on *Tentativo di Aborto Consentito*, in which he takes up the reasons *pro* and *con* governing the constitution of an attempted abortion to which the woman has consented, as a crime. The chief reason for not permitting such an act to be prosecuted is the abuse to which it might be put, while the reason in favor of it is its deterring effect on repetitions of the attempt. Taking up these reasons Longhi then proceeds to deal with the technical phases of the Italian law upon the subject. But they are the reasons of general application that are of interest, showing, as they do, that what is to us a closed question, is still for many an open one. Longhi considers the encouragement given not to the repetition of the attempt but to illicit intercourse, which we submit, is a controlling motive in English legislation on the subject.

J. L.

## COUNSEL FOR THE POOR

**Provisional Liberty and the New Italian Code.**—The new Italian penal code is evidently not the high water mark of modern criminalistic science if one can judge from the lively attacks made upon it in the current periodical literature. Whether the vision of Italian legislators has been obfuscated by the Lombrosian bogie of the born criminal or for some other curious reason, the new penal code extends the privilege of suspended sentence or "provisional liberty" only to persons accused of offences which under the law are liable to penalties of imprisonment for a minimum of five years. Sig. de Mauro protests that this drops not only below the so-called Mancini law of 1876, which introduced the principle of provisional liberty to Italian law, and of course below the English and North American practice, but even below the codes of Russia, or the canton of Neuchatel, and also the old French law of 1865. At least this much of the principle remains, that the judge may grant a hearing upon the application for provisional liberty at any stage of the proceedings, even pending an appeal. No special formula is prescribed for an application for provisional liberty. (*Giambattista de Mauro, Rivista Penale, Aug., 1913.*)

A. J. T.

**Jewish Criminal Law.**—Francesco Scatuto's "*Diritto Penale Ebraico*," in the Jan.-Feb. and March-April numbers of *Il Progresso del Diritto Criminale* contains an interesting resume of the provisions of Jewish law against criminals. It first gives the origin of the courts and procedure, together with an outline of the method of the promulgation of statutes. Then he takes up the organization of the courts. Thereafter, Scatuto takes up the provisions for different crimes. But he lays particular stress on the efforts of the judges to look into every phase of the case before them and to see that their decrees are just. He also points out the religious aspects of crime in the minds of the Jews, not because he regards this as distinctive of a past phase of civilization, but because he considers it rather as a peculiarity of the Biblical people.

J. L.

**Counsel for the Poor in England.**—In the issue of June 13th of *The New Statesman*, a weekly review of politics and literature published in London, at pages 291 and 292, appears the following:

"A considerable advance towards cheap justice for poor people is made by the new Order of the Supreme Court, which came into force this week. Scotland has long had a fairly satisfactory system; but in England the procedure *in forma pauperis*, which was the poor litigant's only avenue to the High Court (failing a speculative solicitor), had so many drawbacks as to be seldom used. Probably few people but those who have acted as Poor Man's Lawyer at a social settlement have any conception of the amount of hardship consequently entailed on the English working and lower middle classes. The new Order, under Lord Haldane's influence, assimilates the English procedure to the Scottish. Two lists are to be drawn up, each including both solicitors and counsel. The members of the first list act much as the Poor Man's Lawyer; they tell the would-be litigant whether he has a case. If they certify that he has, he can claim to have it fought by a solicitor and counsel from the second list. Counsel are to be unpaid in all cases; but a fund is being raised by subscription towards paying the solicitors, who also, where money has been recovered, are to have a limited claim in it for costs."

In the issue of June 27th of the periodical referred to above at pages 363 and 364, there appears an article entitled "The Poor Man and the Law." This article starts with the following statement: "The essence of the new Rules

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of the Supreme Court (Poor Persons) is that they appear calculated to achieve in practice what had previously been only achieved in theory, viz., the complete opening of the Courts to the poor." The article is a trifle over fifteen hundred words in length.

It is stated in this article that "The key to the new system is found in the fact that it remedies the defect of the old system by the establishment of what is virtually an 'exchange,' by means of which litigants anxious to have their cases conducted free will be put in touch with those lawyers who are ready to conduct them free. This 'exchange' consists of lists of counsels and solicitors who are prepared (a) to report on the prospects of the case and on the poverty of the poor person (one may mention parenthetically that under the new rules the financial maximum is raised to the possession of assets worth £50); (b) to conduct the case. In order, moreover, to ensure the perfect impartiality of the report and its complete freedom from the personal equation, no solicitor or counsel can conduct any case on which he has reported. The 'exchange' is under the control of an official known as the Poor Persons' Prescribed Officer, whose duty it is to send out cases to be reported on, and then, if the report be considered satisfactory, to assign solicitor and counsel to conduct the case gratis (though on the termination of a suit in favor of the poor litigant the court has the power to direct payment of moneys out of a fund which the Treasury is given power to establish)."

In this article the nature of the change involved is quite fully set forth based upon a brief scrutiny of the working of the old *in forma pauperis* rules which are thus superceded. The article also gives consideration to "the substantive effect of the new system on litigants, on solicitors, and on the Bar." It seems that some four hundred solicitors and two hundred and fifty members of the Bar have joined in the panel, from which it is "self-evident that any poor person with a reasonably good case will be enabled to have his case conducted by solicitor and counsel assigned to him by the court." It occurs to me that one of the most significant statements in this article is that "One may add that if the machinery of the new rules does prove an effective competitor to the speculative solicitor, the rich defendant will also experience the benefit, as he will be spared the annoyance of fighting or settling actions whose sting lies in their blackmailing quality rather than their intrinsic chance of success (*e. g.*, the breach of promise action supported by infinitesimal, if any, evidence of an actual promise, but relying for its strength on sexual relationship, and if possible a child)."

R. S. GRAY, San Francisco.

### Report of the Court of Special Sessions in New York City.—

The report of the Court of Special Sessions of the City of New York, covering the year ending December 31, 1913, has just been issued. It is an important document, the gist of which may be gleaned from the preface, which is reproduced here in complete form.—[Eds.]

HONORABLE ISAAC FRANKLIN RUSSELL,

*Chief Justice.*

Sir:—Pursuant to the provisions of Section 18, Chapter 659 of the Laws of 1910, I beg leave to submit herewith a report of the business of the Court of Special Sessions and the Children's Courts of the City of New York for the year 1913, and the attendance and proceedings of the Justices thereof.

The composite report of the work of the five adult parts of the Court is in striking comparison with the report for the year 1912, wherein it was disclosed that there were many decreases in various classes of crime for the preceding year, whereas in the year 1913 a remarkable increase is shown. We have

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received 16,506 cases as compared with 11,740 cases in 1912, an increase of almost forty-one per cent. Remarkable as it may seem, there is a large increase in 1913 in certain cases enumerated below which showed a decrease in 1912 over 1911:

	Decrease in 1912 over 1911	Increase in 1913 over 1912
Assault .....	377	493
Disorderly House .....	125	103
Petit Larceny .....	242	469
Liquor Tax .....	55	179
Transfer Ticket Law .....	50	20
Unlawfully Possessing Revolver .....	707	179

A further increase is noted in violations of the Labor Law wherein there was an increase of

1912 over 1911	1913 over 1912
416	1,139

The largest increase of all is noted in violations of the provisions of the sanitary Code, which showed an increase of

1912 over 1911	1913 over 1912
307	1,154

The "Unclassified" list has been kept as heretofore for the reason that the operation of the Factory Law, Fire Prevention, etc., has been in force for a few months of the year 1913. These classes of cases, together with the Possession of Cocaine, make up nearly 1,100 cases of the 1,896 considered as unclassified. The remainder of the unclassified is composed of Unlicensed Dance Halls, Unlicensed Plumbers, Unlicensed Moving Picture Operators and Riding on Freight Trains.

A further comparison of the figures shows that while there were 4,662 convictions by pleas of guilty in 1912, there were 7,533 convictions by pleas in 1913. This is an increase of 2,871 as against a decrease of 922 in 1912 over 1911. The major portion of the increase in pleas of guilty during the past year was in violation of the Labor Law, Petit Larceny, Sanitary Code and Fire Prevention. The most notable increase to be commented upon is in violations of the Labor Law. There were 2,365 cases received, of which 223 were convicted by trial, 2,013 pleaded guilty, 69 acquitted and 29 were dismissed.

A comparison by counties shows that there were 9,551 cases received in New York County as against 7,106 in 1912—an increase of 2,445 cases or 34 1-3 per cent. In Kings County there were 5,836 cases received, as compared with 3,924 in 1912—an increase of 1,912 cases, almost 50 per cent. In Queens County 838 cases were received as compared with 486 in 1912. This is an increase of over 73 per cent, thus showing the largest increase in percentage of the business in any of the counties during the past year. In Richmond there were 281 cases received, as against 224 in the year 1912, practically only a normal increase.

In the matter of the composite report of the Children's Courts it is possibly well to observe that, notwithstanding the increase in population, the total number of children charged with Juvenile Delinquency and also arraigned in Special Proceedings is but 14,969 for the year 1913 as compared with 15,706 for 1912. A further comparison of the reports of the Children's Courts will not be undertaken by me at this time for the reason that I am presenting in somewhat extended form a list of tables and charts of the work in the New

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York County Children's Court which cannot be set up in comparison with the other counties because of the lack of time and space.

Three years and a half have passed since the Inferior Criminal Courts Act of 1910 went into operation, long enough, perhaps, to test the practical workings of that enactment. The steady growth and progress of the city are revealed, in part, through the statistics and financial records of this Court. It does not necessarily follow that advancement in population, wealth, and refinement, means increase in crime. Nor is it true that the criminal habits and practices of mankind keep an even pace with the numbers of the population. The statistics of crime often defy all ordinary powers of analysis and make the interpretation of social phenomena most difficult. Thus, in our present report, it appears, in substance, that the number of cases on the calendar of this Court in Kings County (Brooklyn), as compared with the year 1912, shows an increase of approximately 1900. No resident of Brooklyn, pursuing the simple life, could possibly note such an increase in crime, or any increase at all so far as the external order of human conduct is concerned in that Borough, and the peace of society there so well preserved by those charged with that duty in our civil society. In fact, the District Attorney of Kings County is on record as saying that practically there was no increase of crime in Brooklyn during the year 1913. But if such a rate of advancing criminality as that indicated by mere figures were to prevail in all the five counties of the greater city we would surely have a perfect carnival of crime in a few years. Under the policy that distinguished the administration of the late Mayor Gaynor the number of arrests in the city declined from 250,000 annually to about one half that number. This was due almost wholly to the larger use made of the summons.

We believe and hope that with expanding civilization mankind must see a noteworthy decrease in offenses involving moral turpitude. This era, with a comparatively new theory of criminal penalty, we see even now inaugurated.

The conditions surrounding human life in great cities seem to call for an ever strengthening hold of the municipal government on the regimen of ordinary family and commercial life. The various departments and bureaus that divide the executive authority are reaching out for a greater and greater control. To detail the work of the Department of Health would be to write a book. The purveyors of milk and food within the city are held strictly to an implicit obedience to a law of rapidly-expanding stringency. The burden of adjudication in such cases is on this Court; and the aim of the Justices is ever to stand for a reasonable and equal enforcement of all so-called police regulations, affecting the internal order and economy of society.

Similarly with the newly organized bureau of Fire Prevention, the Court of Special Sessions has the authority under the statute to punish offenders who imperil human life by smoking in factories, or by locking the doors that furnish exit from buildings in case of fire. The wisdom of the new ordinances has been learned at awful cost in flesh and blood; and the Court is fully alive to a situation which the Fire Department has met with a result so successful that fires in the City of New York have been reduced by thousands within the past year.

The enforcement of the Tenement House Law, as respects sanitary conditions, also makes an important demand upon the time and attention of the

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Court, which can only be properly appreciated by those who contemplate the magnitude of the City, its wide area and enormous population.

The list of offenses that are *mala prohibita* and do not necessarily involve moral turpitude in the transgressor, is thus continually lengthening; and no sober judgment can pronounce that real crime, as ordinarily understood, is increasing in New York.

During the current year the Board of Estimate and Apportionment made provision for a Deputy Chief Probation Officer, at a salary of \$2,000. On June 16, 1913, the Board of Justices elected Mrs. Anna L. Gaffney to fill that position. The labors of the Chief Probation Officer are considerably lightened by his assistant whose duty it is to interest herself personally in the cases investigated by the individual probation officers, and aid them in every possible way.

The Board of Estimate and Apportionment has generously allowed in the budget for 1914, an increase in salary for ten male and five female probation officers, the present salary being \$1,200 per annum, and the proposed salary \$1,500 per annum. The officers to be selected for the increase in pay have been chosen solely on the grounds of merit and efficiency. This gives an incentive for good faithful work on the part of such officers.

Since July 1, 1910, forty-three new probation officers have been appointed for the Court of Special Sessions and the Children's Courts. Of these, twenty-nine are male and fourteen female. Together with those officers who were formerly engaged in probation work in this court, who either served gratuitously or were paid from private funds, the whole number of probation officers now employed exclusive of the Chief and Deputy Chief Probation Officers, is forty-nine—of whom thirty-one are male and eighteen female. Of the total number of offices, eight males and one female are assigned to the Court of Special Sessions, New York County; four males and one female to the Court of Special Sessions in Kings County; one male (paid officer) and one female (volunteer) to the Special Sessions, Queens County; one male to the Special Sessions, Richmond County. (The same female officer serves both in the Court of Special Sessions and the Children's Court in Richmond County); thirteen males and ten females in the Children's Court, New York County; four males and three females in the Children's Court, Kings County; two females in the Children's Court, Queens County. (The same male officer acting in both the Adult and the Children's Court, Queens County); one female (paid officer) and one female (volunteer) in the Children's Court, Richmond County. (The same male officer acting in both the Adult and the Children's Court, Richmond County.)

With this adequate and efficient staff of workers, the Chief Probation Officer and the Deputy Chief Probation Officer are able to do a vast amount of work in the reformation and moral rehabilitation of both adult and juvenile delinquents. This court is, perhaps, the only important tribunal, that thus deals with both adult and juvenile offenders by means of probation. The development and expansion of the work of probation, particularly with juvenile delinquents, is a marked feature of our recent progress. The work of reclaiming delinquents proceeds along strictly scientific lines and is in full accord with the best and latest thought of trained penologists. As a feature of this new procedure the reports of probationers are no longer heard in public crowded court-rooms, in the presence and hearing of curiosity seekers, but are rendered *in camera*, as it were, apart from spectators, and, as far as possible, in the evening. These hours are

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selected in the interest of the probationers and in order to make it unnecessary for them to sacrifice the wages of their daily employment.

For many years, the old and dilapidated building at 66 Third Avenue has been an eye-sore to all good citizens who had the interest of the work with juvenile delinquents at heart. At last, through the good offices of the Board of Estimate and Apportionment, \$335,000 was appropriated for the erection of a model building. On August 11, 1913, the corner stone was laid, and appropriate addresses were delivered by Borough President McAneny, Chief Justice Russell and Justice Hoyt. The friends of the Children's Court are looking forward with the greatest expectations to rapid improvement in the work of the court when the new and adequate facilities of the building now rising are available.

For some years past the interest of penologists in psychopathic and psychiatric analysis and experimentation has been great and growing. All now recognize that what is sometimes called crime or delinquency, and what at best is an unfortunate happening, may be treated pathologically instead of morally, and may be conceived as the necessary result of irresistible physical forces rather than the deliberately chosen end of voluntary moral action. Definitely known drugs stimulate sleep, thirst and various animal appetites; other drugs suppress these energies. Music and visions, rest, quiet and summer skies sooth and calm the mind and nervous system, disordered and weakened by the stress and strain of prolonged labor and excitement. Tonsils, appendices and adenoids are often sacrificed with beneficial results. In this way medicine and surgery contribute to solve the problems of criminologists.

Abnormal man frequently appears at the bar of criminal tribunals; and common justice demands that we make a scientific estimate of his capacity for what we have been in the habit of calling free moral action. Does he know the nature and quality of the act which he has committed and for which he has been arraigned? This is the crucial question. It can only be answered by the trained scientific observer, and, in many instances, only after prolonged and patient investigations. This demands laboratories with expensive apparatus and equipment and a staff of specially trained experts. Progress in such a field must necessarily be slow. Theorists and faddists, actuated by an honest but misguided enthusiasm, can only delay and embarrass the work of reform. Not all the defendants who appear in the Children's Courts need the services of these trained experts. The impulses that prompt a boy to take an apple and eat it, to leave school for the playground, and to seek the companionship of spirits kindred to his own, are pretty well known and accurately estimated by the judges of the juvenile courts who have been called upon to adjudicate thousands of cases.

But the exceptional case does appear, perhaps daily in this city, when the last word and the best word of the skilled psychiatrist must be spoken. Appropriations of public money are needed for this purpose and can hardly be gotten till public sentiment is cultivated and aroused.

The Inferior Criminal Courts Act was amended by Chapter 691 of the Laws of 1913, and provision was made for the examination and commitment of mentally defective and feeble-minded children, by Justices sitting in the Children's Court. A written report must be submitted to the Court before the final disposition in the case of a child arraigned, where there is reason to believe that the child is mentally defective. The examination is to be made only when

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directed by the court and is to be conducted by one or more physicians. If found mentally defective the child may be committed to some public institution authorized by law to receive mentally defective and feeble-minded persons.

This act empowered the Mayor to appoint three physicians to be medical examiners in the Children's Court and to hold office at the pleasure of the Mayor. The budget for 1914 provides for the payment of their compensation as fixed by law. On the nomination of the Board of Justices the Mayor appointed Dr. Max G. Schlapp and Dr. D. A. McAuliffe of the Borough of Manhattan and Dr. W. Berry of the Borough of Brooklyn. A stenographer has also been provided for. Rooms and office accommodations for this work have been furnished by the Commissioner of Charities at the Post Graduate Hospital.

FRANK W. SMITH, *Chief Clerk.*

**The Office of Public Defender in Los Angeles.**—In a recent issue of this JOURNAL we published extracts from a pamphlet by Walton Wood, Public Defender of Los Angeles County, California. A new edition of that pamphlet is at hand and we publish here the introduction; a letter, dated June 3, 1914, and addressed to Terence J. McManus, Esq., Secretary of the Committee on Criminal Procedure of the New York County Lawyers' Association. The letter follows.—[Eds.] :

"So many calls have come to my office for the pamphlet which we recently published concerning the work of the public defender that the original edition has been exhausted. In order to comply with the request of your committee for thirty copies of the pamphlet it has been necessary to prepare a second edition. I am very glad that the Lawyers' Association of New York has taken up this matter and I will be pleased to furnish any further information available.

"It has occurred to me that a possible objection might be raised by some who might think that the public defender is a counterpart of the district attorney and would naturally endeavor to undo the work of the prosecuting officer. This, however, is far from the true conception of the office. In considering this matter great emphasis should be placed upon the fact that the public defender is not the reverse of the district attorney. It is not his duty to undermine the work of the prosecutor, nor to secure acquittals regardless of the merits of the case. It is his duty, however, to bring out the facts and the law in favor of the accused. Wherever the defendant is not able to employ his own attorney the office of the public defender is the proper means of investigating the facts in his behalf and presenting them to the court. The work of the public defender is not experimental. Constitutions and state laws have long guaranteed to accused persons an ample defense and a qualified attorney to represent them. In many states a small fee is allowed by statute to the attorney appointed by the court. In other states, California among them, no fee whatever is provided by law for the attorney and no means whatever provided for defraying the expenses of preparing the defense. The creation of the office of public defender simply puts on a reasonable and efficient basis the defense which the law has always pretended to safeguard.

"In Los Angeles the district attorney and the public defender are working harmoniously together. We are doing what the district attorney tried to do in many cases but which, on account of conditions which could not be overcome,



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he was unable to do. We are daily advising the accused of their rights. We are informing them of the law covering the crime of which they may be charged. We are listening to their side of the story and are bringing out whatever points there may be in favor of the defendants, at the same time doing nothing to hamper or delay the administration of justice. Many of our clients come by recommendation from the office of the district attorney, others come from officials at the county jail and others at the request of the judges.

"As an example of the co-operation of the District Attorney and the Public Defender I might cite the case of Frank Walden, who is now awaiting trial on a charge of murder. The only possible defense for Walden is insanity and there is a serious doubt as to his mental condition. It has been the universal custom in cases of this kind for each side to employ alienists, and it is well known that in very many cases alienists are employed who are known to be prone to favor the side that employs them. The District Attorney and the Public Defender in this case have united in asking the court to appoint three able alienists who will serve as the only expert witnesses in the case. This marks a new step in the administration of justice, at least in this part of the country. We are taking the best method of arriving at the truth.

"I call attention to the statement in the letter of Judge Willis that our office 'has been a great saving to the county in the matter of expense.' This is a very remarkable statement, yet I believe it is absolutely true. We have had a number of cases dismissed by talking frankly with the District Attorney and showing him that a trial would result in acquittal. He has, in such cases, dismissed the prosecution. In other cases we have been able to avoid delays and by having attorneys who are familiar with criminal procedure in court at all times the Court has been able to dispatch business much more rapidly. In the matter of expense the same condition to some extent prevails in the civil department of our work, where we relieve the courts of many contested cases by adjusting them without filing suit.

"Civil matters continue to require about half of the time of the office force. Too much emphasis can not be put upon the importance of this department of our work. We have all heard people of limited means say that the courts are only for the wealthy. Thinking people have realized that a very large proportion of our citizens are regarding the courts in this light. When we consider that so many of our citizens are wage earners who have small legal difficulties and that it costs more to solve these difficulties than can be obtained by the remedy, it is not surprising that the opinion is so prevalent that the courts are only for the wealthy.

"Our office does a great deal to help this condition by reducing the expense to a minimum. We are daily adjusting disputes between wage earners and employers and between others who are financially unable to employ attorneys. In most cases both sides are willing to trust the decision of the public defender.

"As an example of what our office can accomplish I might cite the case of one E. R—, who was convicted of a misdemeanor in one of the courts in which we are not authorized to appear and sentenced to serve one hundred days in the county jail. His offense consisted in selling a ticket for a raffle on his watch, without a license. At the time of his arrest he was without funds and had been ill for some time, having lost his employment on that account. He had a wife who was dependent upon him for support, she being crippled and almost

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unable to walk. In desperation he took this means of raising funds and was promptly arrested. His wife was cared for by a friend who was not financially able to bear the expense. After R— had served about one month of his time the lady who had befriended his wife, being no longer able to support her, appealed to the district attorney in an effort to secure his release. The law did not make provision for the district attorney or the public defender or any other official to present the application for parole. There being no other official to attend to this matter, Mr. W. J. Ford, Chief Deputy District Attorney, in the interest of justice, addressed to this office the following communication, dated April 30, 1914:

'Dear Sir:

"We are frequently asked to grant parole to prisoners who are not represented by counsel, and as a consequence the paroles presented by this class of persons are seldom in accord with the rules and regulations of the Parole Commission.

"We require that the prisoner make an application, setting forth the details of the crime, etc., according to the provisions of subdivision 3 of the document hereunto attached. We also require papers from the judge of the court, the arresting officer and, usually, from the prosecuting witness; and so far as this office individually is concerned we require a report from the sheriff or jailer concerning the prisoner's conduct while in jail.

"I have referred the present application to the sheriff and asked him to indicate his approval by signing the parole before I would agree to sign same. Mr. Hammel is unwilling to do this unless we signify our desire to grant the parole. I am therefore referring the bearer to you in the hope that you may find it consistent with the duties of your office to grant the required aid to this lady.

"As these paroles are applicable only to misdemeanor cases, it may be that you consider it technically outside the scope of your authority; but I know of no other office which can give the matter the same intelligent attention that it deserves, unless the applicant has means to employ an attorney, in which case of course I would not expect you to help them in the matter.'

"Yours very truly,

"J. D. FREDERICKS, *District Attorney, Los Angeles.*'

"We at once investigated the matter, and following the legal requirements in matters of this kind, we secured Mr. R—'s release. Once out of jail, however, he was in but little better condition than before—out of employment, without funds and with a crippled wife. In addition to this his former landlady refused to allow him to return to the house which he had been renting and also refused to allow him to remove his personal effects, inasmuch as he was indebted to her in a small sum for room rent. He sought the help of David R. Faries, Assistant Public Defender, who made him a small loan, secured employment for him and took steps to release his personal effects from the landlady, who had no legal right to retain them, at the same time making arrangements with the landlady for her to receive the amount due. Shortly thereafter R— earned enough money to repay the loan to Mr. Faries and to settle his difficulties.

"This case illustrates three things which our office is doing: First, we worked in co-operation with the district attorney's office; second, we performed

## PUNISHMENT AND INTENT

a service which no other official could do; and third, we brought about redress in a civil matter in a case in which the party interested was entirely unable to do anything for himself.

"Many magazines and newspapers throughout the country have commented on our work and in every case which has come to our attention the comments have been favorable. Notable among the magazines which have endorsed the work being undertaken by our office are *The World's Work*, May, 1914, and *The Outlook*, March 28, 1914.

"In Los Angeles there are four departments of the Superior Court which are handling criminal cases. Two of these, presided over by Judges Willis and Craig, are devoted entirely to criminal cases, and two others, in which Judges Taft and Monroe preside, devote part of their time to the dispatch of criminal matters. I am appending hereto letters from these four judges, giving their views of the work we are doing. I am also enclosing a letter from the district attorney of Los Angeles County and letters from Judges Sidney N. Reeve and John W. Summerfield, who have handled a number of civil matters which have come to our office and who are well informed concerning the civil side of our work.

"All of the newspapers in Los Angeles have given support to the work of the public defender. The *Record* publishes a column in which citizens are often referred to this office for civil redress. The *Examiner* and the *Herald* have given publicity to our work and have shown their good-will in other ways. I am appending hereto excerpts from articles published in *The Times*, *The Tribune*, *The Express* and *The California Outlook*. (Excerpts referred to are omitted here.—EDS.)

"The number of cases being handled by the office is steadily increasing. At the date of the publication of the first edition of this pamphlet, March 17, 1914, the average number of civil cases each day was between nineteen and twenty. In the month of May, with twenty-five working days, there were 627 matters, an average of twenty-five per work day. Between January 14th and May 31st, we handled one hundred and sixty criminal cases, of which forty-three came to us in the month of May.

"Let me express the hope that the office of public defender will soon be created in New York and I know that the work of the office will be as satisfactory to the people of New York as it has been to the people of Los Angeles."

"WALTON J. WOOD,

"Public Defender, Los Angeles."

**Punishment and Intent.**—Michele Martazana in "*A proposito di delitti pretes intenzionale: du tema di legioni voluntarie sequita de aborto*," published in the November-December number of *Il Progresso del Diritto Criminale*, takes up the question of the interpretation of that section of the Italian Penal Code which shows that the difficulties which the proposers of codification find in our confusion of common and statute law are not destroyed by a code. The section makes special provision for the punishment of assault upon an *enciente* woman, stating that a knowledge of the pregnancy is a prerequisite. This, of course, destroys the section providing for the punishment of him who inflicts a greater injury than he intends by his assault. The result can well be a defense to an aggravated assault on the ground that the prosecutrix was pregnant and that he had no knowledge. It seems that the comfort of the system under which we do *not* work is often illusory.

J. L.

## IRISH PETTY SESSIONS MAGISTRATE

**The Irish Petty Sessions Magistrate.**—This unique character is a creation of modern political conditions. He hardly knows as much law as Coke or Blackstone, but in conceit and egotism he easily outrivals them. The accession of the "peasant" class to the magisterial bench has resulted in the frequent absence from the bench of the so-called "gentleman magistrates." In this country "class" will not mix with "mass," and certain people imagine that they are of a superior mould of clay to their fellow man. The gentleman magistrate will favor in his decisions the propertied classes; the peasant magistrate the vicious, idle, and criminal elements of society. Their procedure reminds one of the "Turkish Cadi," where the president is at once court and jury. How the bench is packed with absentee magistrates when a case of importance is on for hearing; the reason for this punctuality after a long period of "absenteeism" is easily discoverable in the fact that the appointments are all political ones, and given as a reward for years of active political services by the Secretary upon recommendations of the party leaders. That this procedure is pernicious to an extreme no one of ordinary intelligence will deny; their decisions today are of such a partisan nature that "police court justice" in Ireland is a howling farce and a burlesque upon common sense and fair play. Their decisions are somewhat like those of the judge in Rabelais who in deciding cases used "big dice for big cases," and small dice for small cases, and shook them; but the judge in Rabelais did not blend his decisions with his future commercial interests, or traffic in justice for personal exploitation, and self-aggrandizement. The decision of a bench of magistrates at times is predicted almost a week before the court opens; the character of the man and the nature of his crime are but mere details in the decision of the case. The "pull" is just as strong here as in any other part of the world; the politics of the accused is important evidence, not legal of course, but it plays an important part in the disposition of the case. Decisions can be forecasted when one knows the political complexion of the bench; the result is that we have at hand all those extraneous matters which vitally affect the decision of the case, the evidence is secondary, and in many instances we see miscarriage of justice. A "blackguard" who commits a heinous offense can escape with a light sentence if he happens to be an ex-soldier who served in the South African war; his lawyer can say that his mind was affected with the heat, and here we have a striking illustration of the old adage, "patriotism is the last refuge of a scoundrel." On the other hand if the defendant happens to be a "returned American," without any further evidence the penalty is increased; how a native born Irishman who left Ireland and merely sojourned a few years in America can be termed an American is a problem beyond my ability to solve. A bad character leaving Ireland will readily find vicious associates in America; and upon his return to Ireland from America we have a blending of the vicious types of the two countries. In like manner the good Irishman remains good in America; but the prejudice here is so strong against America that the good type of citizen is placed in the same category as the idle and vicious character. Why a respectable Irishman whom unfavorable circumstances forced to emigrate should be placed in the same class as the idle and vicious criminal who learned most of his deviltry and bad habits from the indiscriminate herding in barracks of individuals of all grades of depravity is a problem incapable of solution, and the magistrates who allow this prejudice to influence their decisions are false to their official oath, lacking in ordinary intelligence, and unfit to administer justice in the community. I know personally

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that the magistrates move on terms of intimacy with people who in some instances become defendants before the court; the Petty Sessions court is rightly named; in many cases the business is of a trivial nature and administered by individuals of enormous conceit and limited education. The Royal Commission has recognized many of these defects, and offered suggestions tending toward a remedy, but they have only scratched the surface, as long as the government appoints men to perform important magisterial duties who know more about the price of beef, bacon, butter and eggs than they do about law, men to whom statutes and legal decisions are an unexplored wilderness; court procedure a labyrinth of ignorance, just so long will the common people cease to respect the courts, and the peace and safety of the country will always remain at the mercy of the idle and vicious elements of society.

JOSEPH MATTHEW SULLIVAN, Boston, Massachusetts.

**The Prisoner's Life.**—The following from the *New York Times* of July 17 is an admirable expression of the psychological effect of work, under proper conditions, upon the prisoner.—[Eps.]

"Reading of the Blackwell's Island riots, may I ask, When will this merely negative method of dealing with the problem of crime and punishment cease? Shall we ever have a constructive programme for the training—not simply the punishment—of prisoners in Sing Sing, Blackwell's Island, and other similar institutions? It is high time that we learned and put into practice a few fundamental principles of boy training, man training, and of human nature in general, which would put a stop to the riotous outbreaks and the brutal beatings and barbarous howlings that follow them in our penal institutions.

"The first principle is this: That punishment—mere punishment in itself—rarely does anybody any good. It is a negation. The evil deed—the crime—was a negation, a destructive act. The cure for it certainly does not lie in another negative experience. The remedy, if found at all, will develop through a constructive experience.

"The second principle is that the essential element in all constructive endeavor, whether a man is in prison or out of prison, is motive. If there is no motive in the prison life of these men except to reduce by 'good behavior' their term of sentence and submissively endure the dull, slow passing of time until their release, no moral reconstruction can be expected. The net results of the State's effort in such cases is liable to be a further blunting of the moral sense, less self-respect, and a greater contempt for the authority that imposes such a negative régime. The cue to a constructive programme lies in motivation. Every man, whether confined or free, should have something to live and work for. Without wholesome motives to live and work for he is worse off than the brute and quickly descends below its level.

"Doubtless most men in Blackwell's Island prison have friends or relatives whom they care for and who care for them. If they have neither of these, they may have interests or desires in life which are not criminal and which they look forward to when release comes. If the convict could do something for his family, relatives, or friends, or for any cause dear to him, such a privilege would introduce a constructive element into his otherwise gloomy, negative, and empty existence. It would give him something to live for even in prison.

"Introduce a wage system, piece-work, savings accounts, opportunity to use one's own earnings to improve and refine his own living conditions while in

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prison, the privilege to send his earnings to relatives or those dependent upon him, and the curse of an empty, aimless, dead-level prison life will be lifted. Such a system would break up into thrifty, enterprising, individual units the stubborn, sullen, undifferentiated mass which now constitutes the prison population in Sing Sing and Blackwell's Island.

R. R. REEDER.

Superintendent Asylum Society Orphanage."

"Hastings-on-Hudson, N. Y."

**Infernos Termed Penitentiaries.**—"Wilson, official druggist at Kingston Penitentiary, Ontario (one of the prisons maintained by Canada's federal government), is not a mere dispenser, but a sort of overseer charged with the duty of attending sick criminals who may suddenly need aid. The following extract from recent evidence of a guard before a Royal Commission of Investigation into conditions in the penitentiary was cited recently in debate by Mr. Edwards, Tory M. P. for Kingston, who had, last year, humanely instigated appointment of the commission:

March 7—Called Wilson for convict Bunyan, suffering intense pains in stomach, at 12:15 A. M., and again at 2:30 A. M. Wilson refused to get up. Convict dies same morning.

March 31—Convict Lottridge suffering from injury to thigh and from bed sores, called Wilson 4:30 A. M. Refused to get up. Convict died next day, April 1.

April 14—Called Wilson 1:05 A. M., for convict Hamilton, was "suffering pains all over the body." Refused to get up. Convict died April 16.

April 24—At 9 P. M., Wilson told him that the things for laying out the body of the convict who was expected to die were in cupboard. During night convict got worse and started shouting. Called Wilson 3:30 A. M. and again 4:45 A. M., asking him to give convict something to quiet him. He refused to get up, stating he could do nothing. Convict died that morning.

Engledew reported Wilson to the warden for refusing to get up and also reported at Ottawa.

"On this the commissioners reported:

"Your Commissioners are of the opinion that these patients were practically beyond human aid and that in their case no hardship was inflicted by Wilson's failure to get up and see them."

"Possibly absent-mindedness alone prevented the commissioners extending sympathy to Wilson, on the ground that his rest had been provokingly disturbed. The citation is presented here to indicate at once conditions in the penitentiary and the leniency with which officials there have been treated by the Royal Commissioners, who have made a kalsomining report in the opinion of the Tory M. P. Edwards. Yet the document is a revelation of prison horrors scarcely less atrocious than those which burned in the heart of Elizabeth Fry.

"Canadian federal politicians have been closely engaged for two generations in problems of settlement and development and portioning the products of the industrious amongst grafting financiers and railway promoters and manufacturers. Hence Parliament had little or no time for consideration for the kind of criminals who get into prison, though some of these were moving straight toward knighthood when, having gone broke, they suffered the pangs of exposure, arrest, and conviction. Though the prison system administered by the government of Province of Ontario is modern, humane, sensible, reformatory in the highest degree, the Ottawa government maintains sundry establishments whose interiors resemble many of mankind's worst dreams of hell. These

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places of torment are each nominally under a warden, who is nominally responsible to the Ministry of Justice. But the wardens are mere figureheads in respect of administration. They are politicians with fat salaries, appointed in reward of past party services, expected to do little or nothing more than have a good time. The deputy warden, also a political appointee, is in charge, with great authority. Yet he has, in prudence, to take on as guards, etc., such men as local politicians favor. When the deputy warden is, either naturally or by induration, a devil, then the guards and other underlings naturally become his fit satellites. There are inspectors, but it is easy to understand that they naturally sympathize with the regnant powers, and outrage, in effect, Oh, what's the use? when stirred by conscience or complaint to meditate or recommend reform. Conceive also a continual war between the Orange and the Roman Catholic officials of the prison—one set charging the other with favoritism to prisoners of their own breed—then you may have some faint notion of the state of affairs that has lasted so long in Kingston Penitentiary that the Royal Commissioners barred out evidence as to what was done there more than five years ago. Even the truth concerning the horrors of the last quinquennial was not thoroughly ascertainable, because such evidence as was not volunteered by angry, discharged guards, etc., had to be mostly dragged out of convicts in mortal fear of the deputy warden, etc., or from minor employees afraid of losing their jobs.

"One political party is neither more nor less than the other to blame for Kingston Penitentiary. A Tory government handed it to a Liberal government in 1896, just as it is today. A Liberal government handed it back to a Tory ministry nearly three years ago. As to conditions now, let us take the testimony of Mr. W. F. Nickle, M. P. for Kingston, elected as a Tory, but who has proved himself independent, and a real man—nowadays almost unique in our politics. In the insane ward he found 'fifty men of all types of insanity and with all classes of mental diseases, herded day after day in one long room. The melancholy and those whose insanity is the foolishness of the not fully developed are together. There is no such thing as segregation, no such thing as treatment, no such thing as exercise, no such thing as uplifting surroundings; but one great bare room in which are brought together fifty men, most of whom walk restlessly to and fro, though now and then one may be seen standing looking out to the great beyond across the lake. That asylum was condemned many years ago, yet government after government has failed to take steps to rectify the wrong. There are in that ward men who have suffered punishment after punishment—not once or twice only, but a dozen times; they have been subjected to every punishment because they could not submit themselves to a discipline they did not understand. They have been confined in the dungeon; they have been deprived of light, of food; they have been subjected to every indignity, and for what cause? Because those in authority failed to recognize mental derangement as distinguished from criminal intent.

"Go with me to the stone pile, where seventy men spend life in breaking stone. Day after day these men on the stone pile are engaged in labor that is not productive, that does not amount to anything, always the tireless clank, clank, clank of the hammers, and as the pile of broken stone grows other convicts remove it, while still others dump another load and the work goes on. And so, at the end of his time, a man leaves no better than he came, dwarfed in body and in soul, and feeling at war with humanity because of the system that

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has robbed him of so much of his life. Then, take education. What is the House to say of a punitive system the heads of which say that children of fifteen and sixteen are not entitled to education, that the penitentiary is a punitive institution, that the judges send men there to be kept, not to be educated; who say that if you educate the child you make him, perhaps, a more dangerous criminal. Perhaps you may in an odd case, but is not the thing worth trying when you have twenty or thirty boys to consider? And has society no duty to these children? I have known a boy of fifteen, in knickerbockers, brought to Kingston handcuffed to a man who had been guilty of a most heinous and revolting crime. That child was sent to the penitentiary for stealing a workman's tools. You may say that that is a matter for the judge to decide. That is not the case, for these questions do not come before the judges. The question of the punishment to be meted out to these children often comes before the local magistrate. It is not always the character of the crime that determines whether the children shall go to penitentiary or not, but it is often the discretion of the magistrate as to the term; two years and over and you go to penitentiary; less than two years and you go to the reformatory. I say that if the administration of justice is to be left to magistrates who do not understand conditions, who do not appreciate the distinction between a reformatory and a penitentiary, then this country has a duty to the young children—because I say that a boy of fifteen or sixteen years of age is practically a child—to see that they are educated so that when their terms have expired they will be better fitted to resume their occupations in life and to make an honest, decent living for themselves.

"Then we come to the hospital, a great gloomy building, two stories in height, no outside cells. About ten or twelve feet back from each of the exterior walls runs a tier of cells, down the center of which is a corridor. One side of this building looks toward the gloomy, gray wall that bounds the penitentiary on the north; the other looks toward the south and is somewhat more sunny. Who are the caretakers of the sick? The convict orderlies. Where do they get their attention? From other convicts. What is the general outlook? Great, grated doors, with bands of steel or iron one and a half inches across, with openings between of perhaps one and a half, one and three-quarters or two inches. What happens? At night these poor fellows are locked up in these and the evidence has shown that in their desire for a drink men have slipped from the cots and fallen on the floor and had had to lie there during the night because they had not strength to get back into their cots. And yet we say we are a Christian, civilized country! \* \* \*

"Commenting on the horrors of the evidence, which the Ministry have not yet allowed to be published, Mr. Edwards said: 'How is tubbing carried on? The convict's clothes are taken off, his feet are strapped together, his arms are strapped to his sides, and he is then immersed in a tub of water which may be ice cold or just moderately cold, depending on the season of the year. Many of them were tubbed in the months of January and February. These men, strapped as I have indicated, were shoved down under the water by the guards, and when they came up were shoved down again. As one guard testified, they were shoved down till the bubbles came to the surface. Just imagine it! Many of the men who were treated in this manner were of the insane kind. Guard Bryant gave evidence before the commission in regard to tubbing. He says he saw convicts with legs strapped together and arms strapped to the sides put into the water:



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Q.—“They (the guards) would lift them up and put them in the water? A.—Yes.

Q.—Would they go right down below the surface? A.—They would just go down and up again.

Q.—Down below the surface? A.—Yes.

Q.—Would their heads go under the water? A.—Yes, their heads go under the water.

Q.—And picked up? A.—Picked up at once by the guard.

Q.—And go down and picked up again? A.—Yes.

Q.—Who would give that order? A.—By the authorities.

Q.—Who would that be? A.—Either the warden, the deputy warden, or the doctor could give that order.

Q.—Either one of the three? A.—Yes.

“Take the evidence of another man, Wesley Babcock, who helped in the tubbing :

Q.—“Ever see a prisoner put in the tub to give him a cold bath? A.—Yes.

Q.—Where was that. A.—Asylum.

Q.—By whose orders? A.—Mr. McWaters.

Q.—What office did he hold? A.—Acting keeper, I think, at the time.

Q.—Why was the tubbing done? A.—He insulted another officer.

“And this was an insane man!

Q.—“How did you proceed to punish this man? A.—Filled the tub with water and put him into it.

Q.—And held him down? A.—Yes.

Q.—In cold water? A.—Yes.

Q.—An insane patient? A.—Yes.

Q.—An insane patient who was guilty of insulting one of the officers, and who was subjected to this for punishment for the offence: that is right? A.—Yes.

Q.—How long did they keep him in the cold bath? A.—I could not tell you how long they kept him in. They kept him in till he gave up, till he said he was sorry for what he had done; that is all I know.

Q.—Was he held under the water? A.—Yes.

Q.—Was he there half an hour? A.—No, he would have been dead if he was.

Q.—Was he pushed down in the water? A.—He was.

Q.—Was he smothering when he came up? A.—He was.

Q.—Did you ever see blood coming out of the mouths and noses of convicts treated in that way? A.—Not out of him.

Q.—Did you like that treatment? A.—I would not want it myself.

“Now let us look at the evidence of Douglas Stewart in regard to hosing :

Q.—“You find this (hosing) more efficient (than the triangle)? A.—More effective.

Q.—What is it that makes it so effective with these convicts? A.—It takes the defiance out of them.

Q.—How? A.—If you got the hose you would know.

Q.—What is it? A.—I suppose it is the impact of the hose against the body, knocks the wind out of them.

Q.—And it seems to succeed where nothing else will? A.—Yes, it never failed yet.

Q.—To beat an incorrigible convict into submission? A.—Yes.

Q.—Is that the most severe punishment? A.—No, I think shooting is more severe.

Q.—You mean killing a man outright? A.—Yes.

“When Inspector Stewart was asked what pressure was on the hose, he said it would be sixty pounds to the inch.

“The evidence includes many thing as hideous and abominable, some much worse. Of course the Royal Commissioners inveighed against ‘the system’ and advised all manner of reforms. These will not be effected soon, because Parlia-

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ment, after devoting many weeks to gabble on purely partisan affairs and more to gabble on the Mackenzie-Mann grab of forty-five millions, is about to adjourn for six months or so. No time left to deal thoroughly with the various federal infernos termed penitentiaries! Perhaps the disposition of ministry and members to remodel Canadian prisons, for which they are responsible to God and man, may be stimulated by exposure of the shameful conditions in the United States and elsewhere abroad. That is why this contribution has been sent to *The Transcript*."—E. W. Thomson in the *Boston Transcript*, June 3, 1914.

**The Treatment of the Misdemeanants.**<sup>1</sup>—Who knows how many persons are confined in local jails in the United States? Who comprehends the magnitude of the problem involved? How many appreciate its relation to the individual, to his family, to society?

The Bureau of the Census tells us that 452,055 persons were committed to county and municipal prisons in 1910, under sentence or for non-payment of fine.<sup>2</sup> We call them misdemeanants. It is the name ordinarily given one whose offense the law does not deem sufficiently serious to warrant a state prison sentence. If the ratio of commitments to the whole number received is the same throughout the United States as in Indiana, it is probable that one and one-half million people annually come under the influence of these local prisons.

We know that jails are the spoil of partisan politics. They are maintained largely on the fee basis. Most of them were built without any proper idea of the purpose they were intended to serve. As a rule they are insanitary, they lack proper provision for separating the sexes and there is no means of employment. Often they are crowded beyond their capacity. There is little attempt to classify the prisoners. They congregate in the corridors and the older and more experienced in criminal ways instruct the others in vice, immorality and crime. In how many such institutions are women not only waited upon but searched by men?

The late Samuel J. Barrows once remarked: "Back in 1867 a committee of the New York Legislature said: 'There is no one source of crime more operative in the multiplication of thieves and burglars than the common jail,' and that statement still remains true of a large number of jails throughout the country."

Many of you heard Dr. F. H. Wines' scathing denunciation of these institutions.<sup>3</sup> Delegates to the International Prison Congress who visited this country in 1910, declared our local jail system as bad as it was centuries ago in Europe. "Every jail I saw ought to be wiped off the face of the earth," said Thomas Holmes, secretary of the Howard Association of London, and this was the general verdict of these distinguished prison officials and penologists. It was the idleness of the prisoners, the lack of fresh air, the indiscriminate mingling, the long delayed trials that impressed them so unfavorably. "I asked two colored men how long they would be in and they said they did not know; that they had waited eleven days for a trial," said Dr. Eugene Borel, professor

<sup>1</sup>Report of the Committee on Corrections presented by Amos W. Butler, Secretary Indiana Board of State Charities, Indianapolis, Chairman, before the National Conference of Charities and Correction at Memphis.

<sup>2</sup>Bulletin No. 121, Department of Commerce, Bureau of the Census.

<sup>3</sup>Proc. N. C. C. C., 1911, p. 52.

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of law in the University of Geneva, Switzerland. "That is a shocking travesty of justice. In Europe a prisoner gets a hearing within twenty-four hours."

Yet under such conditions as these we detain hundreds of thousands of persons—the vagrant, the drunkard, the witness, the run-away boy, the first offender, the hardened criminal, the man awaiting trial, the convicted law-breaker. What can we expect but that they will degenerate in body, mind and morals? Even where work is provided, as is done in some larger jails and workhouses, it is under the old contract system, which we should all like to see abolished. In some states misdemeanants are employed on the public highways. However successful this may be in some parts of the country, it would probably not be in conformity with the public sense in the more thickly settled communities, or practicable to any great extent in the more northern latitudes.

The whole question of the apprehension, treatment and release of the misdemeanant is of tremendous importance. While prison reforms are coming with surprising rapidity, they have been confined largely to the felon. The misdemeanant has been neglected.

In the first place, what are the qualifications of the average policeman? Ordinarily he is without training or experience. His politics have usually had more to do with his appointment than any other consideration. What part can such a policeman play in an enlightened system of penology?

In a number of states the constitution proclaims that the penal code shall be founded on principles of reformation and not of vindictive justice. How far has that been interpreted in the statute laws? The provision of most of our state constitutions that justice shall be administered "speedily and without delay" is wholly forgotten. We generally think that the day of imprisonment for debt is past. Yet many jail prisoners are held for debt—the fine assessed against them. The man of means pays his fine and goes free; the man without money suffers imprisonment under conditions which menace health and morals. It frequently becomes necessary for his family to ask for help; sometimes he loses his job. If he becomes embittered, or vindictive, need we wonder at it?

The picture is not all dark. Here and there light is breaking through. We are coming to understand that the policeman can be a social agent, a next friend, an instructor in obedience to the law. We are beginning to regard as the best officer the one who makes the fewest, not the most arrests. In some cities women are being added to the police force, and there are police matrons, and jail matrons, and even women judges.

"Humanizing the courts" is an expression coming more and more into use. Instead of sending to jail men who are unable to pay their fines, judges are releasing them conditionally and giving them a chance to earn the money. The plan works admirably. Judges are finding that their confidence is seldom misplaced. This principle has been enacted into law in Massachusetts and other states. Elsewhere it has been practiced without special authority of law. In New York State the probation law provides for the collection of fines on probation and also for restitution on probation.

We are further coming to believe that too many persons are sent to prison. Some states have adopted a system of probation, under which many law-breakers are reclaimed to society without the stigma of a prison sentence. Probation has been successfully tried in Massachusetts, New York and other states.

We have learned too, the value of the farm colony for the open air

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employment of almost all classes of public wards. This has been applied to the insane in Wisconsin, Massachusetts and Indiana; to epileptics in New York, New Jersey and Indiana; to feeble-minded in Massachusetts, New Jersey and Indiana; to both dependent and delinquent children in many states, and more recently to certain classes of prisoners including all kinds of misdemeanants of both sexes. What is being done at Cleveland, at Occoquan and at Guelph is well known. The most recent development of this movement is the New York State Farm for women misdemeanants. The simple, inexpensive, yet substantial form of buildings, the freer life and the opportunity to contribute in part at least to their own support, make it far better for the inmates and cheaper to the taxpayer.

In Indiana the first step in this direction came about through the establishment in 1907 of a state workhouse for women misdemeanants, as a branch of the Woman's Prison at Indianapolis. The institution is entirely in control of women. Then the Board of State Charities began a vigorous campaign for a state farm for male misdemeanants. Conditions in the county jails were shown forth in the following paragraph:

### HOW PRISONERS LIVE AND LEARN IN INDIANA COUNTY JAILS.

They live in idleness at the expense of the taxpayer.

They learn vice, immorality and crime.

They become educated in criminal ways.

They degenerate both physically and morally.

In 1913 an appropriation was secured, the land has now been purchased, and work on the buildings will soon begin. The law contemplates that the construction work shall be done largely by State Prison and Reformatory men. The new institution is for men who have a jail sentence of sixty days or more, and prisoners may be transferred from the state institutions whenever room for them exists at the farm. Eventually there will probably be several such farms in the state, and this movement, with proper amendments to existing laws, should in time do away with the use of the county jails for the confinement of convicted offenders, and leave them only as places of detention.

We now look forward to the time when we shall have a form of indeterminate sentence for misdemeanants. The success of this form of sentence for felons in Indiana as in many other states justifies our belief that it will prove valuable in the treatment of misdemeanants. Certainly some improvement can be made over the present illogical short sentence, which benefits neither the individual nor the public, in whose name he is held.

New York has already taken an important step in this direction. Misdemeanants between the ages of sixteen and twenty-one are to be committed under an indeterminate sentence to the reformatory for this class of offenders, authorized by the legislature of 1912. The site for this new institution has not yet been located. It is the purpose of those interested to place it on a farm and to make it one of the most complete and modern of reformatories.

Another needed reform, state control of county jails, is receiving some attention. J. S. Gibbons, chairman of the Prison Board of Ireland, said: "I tell you what I think you lose sight of in this country—that all these splendid reformatories deal with merely a drop in the ocean compared with the county and city jails, to which your thousands of prisoners go and where many are

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manufactured. We were in exactly the same condition up to 1877, when we brought county and city jails out from under local authorities in the United Kingdom. We found the antecedent to all reform was state centralization. In 1877 every prison and jail was put under central administrative authority and the expenses paid out of the imperial funds. Three acts were passed simultaneously for the three kingdoms. We then began at the bottom, closing all the superfluous ones, and in that way we were able to close about half."

I have the following statement from Sir Evelyn Ruggles-Brise, of England: "The Prison Act, 1877, transferred the local prisons of this country (*i. e.*, prisons for the confinement of all classes of prisoners other than those sentenced to penal servitude) from the control of local "Visiting Magistrates" to that of the State. The Act came into effect on the 1st of April, 1878, 113 local prisons being so transferred. Since that date, their number has been reduced to 56. At the time of their transfer, the local prison population stood at 21,030—the highest known. From that date a continuous fall was recorded until 1885, when the numbers reached slightly over 15,000. After a series of fluctuations below and above this number, the population stands at 15,000 at the present time. Relatively to the total population of the country, the figure for 1878 represented 686 committals per 100,000, while that for the year ended 31st March, 1912, was the lowest on record, *viz.*, 439 per 100,000."

Massachusetts, perhaps, has led the agitation in this country for state control of county jails. In other states there has been some publicity in favor of such action. An offender against the Federal law becomes a prisoner of the United States and is under the direction of the Federal judge. Why should one who violates a state law not be a prisoner of the state? That is the theory which underlies the new law for jail supervision in Indiana. Offenders against the state law have been placed under the oversight and authority of the judge of the circuit or criminal court, who is a state officer. This judge may say where and how the prisoner shall be detained, and if the jail is unsatisfactory he may condemn it. He is authorized to prescribe rules formulated by the Board of State Charities, which has supervision of all jails and other public charitable and correctional institutions. A violation of these rules, once entered in his order book, is in effect a contempt of court.

While these advance steps have been taken, the reform is by no means general. Most of the states continue to use, unchanged, the system long since discarded in Europe, whence it came. The results are not reformatory. On the contrary, they are destructive alike to the individual and those with whom he later comes in contact. Local jails are recruiting stations for our larger state correctional institutions. We should make greater progress in reformation if we did not first pollute the stream we are going to treat.

The outlook is not bright, but it is by no means hopeless. The evils which exist are the natural result of the system we adopted. Let us change the system. Let us begin at the bottom and study all the steps in the treatment of the offender—his apprehension, detention, trial, conviction, probation, confinement, treatment, employment, conditional release, final discharge. Let us set as our goal:

1. A system of police recognizing character, merit and efficiency in the personnel and a proper social view for its operations.
2. A prompt hearing for every person arrested.

## FOREIGN AND DOMESTIC POLICE SYSTEMS

3. The establishment of juvenile courts for all children's cases.
4. Provision for the care and detention of delinquent children outside the jail.
5. A probation system for adults similar to that of juvenile courts.
6. Separate trials for women offenders.
7. A modification of the present system of fines in order not to discriminate against the poor.
8. Classification of prisoners, confinement of individuals apart from each other and absolute sex separation in county jails.
9. The prohibition of the use of the jail for any other purpose than that of temporary detention.
10. The abolition of the fee system.
11. State control of all minor prisons.
12. The establishment of industrial farms for convicted misdemeanants.
13. A form of indeterminate sentence for misdemeanants.
14. Their release on parole under supervision.
15. The abolition of contract labor.

The following members of the Committee on Corrections approve and sign the report:

Major R. W. McClaughry, Julian W. Mack, Arthur W. Towne, Frank E. Wade, Joseph P. Byers, John J. Sonstebly, Quincy A. Myers, W. H. Moyer, A. J. G. Wells, J. A. McCullough, John H. Dewitt and Archdeacon B. M. Spurr.

Mr. E. Stagg Whitin disagrees with what is said about the employment of convict labor on public highways in the more thickly settled northern states.

A. W. BUTLER,  
Indianapolis.

**A California Society for the Reform of Delinquents.**—In Los Angeles a society has been formed with the object of assisting in reforming moral delinquents by psychological methods. Ministers, judges, probation officers and policemen are interested in it. The organization is open to all sects and creeds and expects not only to cure criminals but prevent persons from becoming criminal. Judge Curtis D. Wilbur of the Superior Court of Los Angeles has taken a great interest in the society and has offered several practical suggestions as to dealing with penny arcades, obscene literature, playground commissioners, labor laws and special legislation. Clergymen and their church members will be "big brothers and big sisters" to the wayward and study how to apply the laws of psychology to the delinquent in the best manner. It is hoped that all who will have to deal with delinquents may be trained to become capable mental physicians and thus help in reformation.

W. I. DAY, East Oakland, Cal.

### POLICE.

**Foreign and Domestic Police Systems.**—The average student of police systems falls into the common error of overestimating the virtues of the English police and at the same time disparaging our own police system. He will go into ecstasies over the unexcelled system and superiority of "Scotland Yard," and will relate their successful ventures in the domain of police work and detective ability. The two countries are wholly dissimilar in institutions, people and general characteristics. England is a small country, and the problem of policing it is a very simple matter. But the English police are no more success-

## MEETING OF THE ILLINOIS BRANCH

ful in handling the foreign criminals who flock into London than their American brethren over the seas. In fact, to my way of thinking, the American police show a decided superiority in handling the foreign criminal; they succeed in convicting them oftener than the English police do on similar occasions. Of course, when the observations are made we realize that the subject matter of discussion are over three thousand miles apart; on this account all comparisons and deductions made as to the superiority of one system over the other must necessarily be full of imperfections and errors. America is the "melting pot" of the nations; every year along with good immigrants we receive a flood of lunacy, disease and crime which is dumped upon our shores. The massive problem of dealing with this mass, and making them observe the laws of this country is a question which does not occur to the half-educated and ill-informed social worker. The average immigrant who comes from monarchies has felt the burden of oppressive laws and when he begins to understand "English" thinks he has a mission to reform America; he never thinks that he should start with himself. The laws under which he has lived in Europe are radically different from those of our own country, but in his illiteracy and conceit he confounds them, with the result that we have a poor type of citizen with anarchistic tendencies. It is this type which fills our halls and lectures on the ills of humanity; they have a salve for all human troubles and moral disorders of mankind. Instead of preaching sermons to these types in prisons a lecture on civil government would be of more lasting value; the foreign criminal is on the increase and will continue to be until we have better immigration laws. The immigrant who comes merely to "exploit" the country, and in his selfish avarice obtains all its advantages and assumes none of its responsibilities and burdens should be denied entry at our hands. When you compare police systems the student should bear in mind that the American police, in addition to taking care of our own malefactors, have also to keep in check all the notorious characters of criminal immigrants.

JOSEPH MATTHEW SULLIVAN, Boston.

**Course for Police in Paris.**—To secure better technical equipment for the members of the criminal brigade in the police service, the prefect of police in Paris has established a regular training course for police under general direction of M. Bertillon. It includes such subjects as the concrete duties of the various departments of the police service, elements of practical penal law, methods of judicial investigation, types of evidence, weapons and tools used by criminals, methods of arrest, methods of executing judicial orders, special types of criminals operating in large cities, methods and rights of defense, preparation of reports. (*Rivista Penale*, Apr., 1914.)

A. J. T.

## MISCELLANEOUS.

**Annual Meeting of the Illinois Branch.**—The third annual meeting of the Illinois Branch of the American Institute of Criminal Law and Criminology was held May 26 and 27 at the Hotel LaSalle, Chicago. Following the arrangement made the year before, the sessions of the Illinois Branch were held in connection with the annual meeting of the State Bar Association. By the courtesy of the State Bar Association programs of the two meetings were sent out in the same envelope to all members of the Bar Association, and

## MEETING OF THE ILLINOIS BRANCH

space was allowed in the annual report of the Bar Association for a brief resume of the proceedings of the Illinois Branch. In point of attendance and interest the third annual meeting was the most successful meeting so far held. However, it is still a matter of regret that more members of the bar do not take an active interest in the work of the State Society.

All the papers read at the third annual meeting will be published either in the JOURNAL or in bulletin form. Hence only the topics discussed and the names of those taking part in the discussion will be set forth here. The first session was held at 3 p. m. in the College Room of the Hotel LaSalle on Tuesday the 26th. Judge William N. Gemmill of the Chicago Municipal Court, read the President's annual address. His subject was, "The Criminal, Who Is He, and What Shall We Do With Him?" The President's paper was discussed by Nathan William MacChesney, John H. Wigmore, John F. Voigt, Edwin R. Keedy, F. Emory Lyon, Charles Richmond Henderson and C. G. Vernier.

A committee of three consisting of John H. Wigmore, chairman, Nathan William MacChesney and Oliver A. Harker, was appointed to nominate officers for the ensuing year. After considering various resolutions the society adjourned to 7 p. m. for an informal dinner in the East Room.

Edmund M. Allen, warden of the Illinois State Penitentiary, who had prepared the first paper for the second session was unable to be present. His paper, entitled, "The Execution of the Penalty," was read by Dr. Charles R. Henderson. Warden Allen's paper was discussed by Charles R. Henderson, Albert C. Barnes and Edwin R. Keedy.

The second address of this session was delivered by Professor Harry A. Bigelow, of the University of Chicago Law School, and was entitled, "A Brief Review of the Criminal Cases in the Supreme Court for the Past Year." Professor Bigelow's paper was discussed by O. A. Harker and C. G. Vernier. Major James Miles, Examiner in Charge of the Efficiency Division of the City of Chicago Civil Service Commission, read the first paper of the third session. His subject was, "Police Reorganization." Discussion followed, by Frederic B. Crossley, Horace Secrist and Charles R. Henderson. The last number on the program was a paper by Dr. Paul E. Bowers, Physician in Charge of the Indiana State Prison, Michigan City, Indiana. His subject was, "The Recidivist." Dr. Bowers' paper was the cause of a very lively discussion in which John L. Whitman, Dr. Charles E. Sceleth, Dr. S. L. Cabby, William N. Gemmill, Edwin R. Keedy, Chas. C. Love, John H. Wigmore and William G. Hale, joined.

The following resolutions approved by the Executive Council were adopted by the society.

1. We recommend the preparation of a bill for a law creating state colonies for misdemeanants convicted under state laws, with the provision that cities and villages may send their convicted misdemeanants to such colonies for discipline upon payment of the proper ratio of cost of maintenance.

2. We recommend the consideration of a joint commission of the County of Cook and the City of Chicago for the maintenance of a Bureau of Welfare, one of whose duties would be to establish and maintain agencies for the prevention of vagrancy as well as for the conviction of habitual misdemeanants by training shops, gardening, farming and other suitable occupations.

3. We recommend the consideration of a bill for a law placing power to make regulations for the structure and management of county jails and city lock-ups in the hands of a State Board of Administration, with provisions for



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necessary inspection and enforcement of the regulations. Resolutions number one and three were referred to the Legislative Committee, Nathan William MacChesney, chairman.

Officers for the ensuing year were elected as follows:

**PRESIDENT**—George T. Page, former vice-president State Bar Association, Peoria.

**VICE-PRESIDENTS**—Charles R. Henderson, International Prison Commissioner for the U. S., University of Chicago, Chicago; Robert H. Gault, Editor Journal of Criminal Law and Criminology, Northwestern University, Evanston.

**SECRETARY**—Chester G. Vernier, Professor of Law, University of Illinois, Urbana.

**TREASURER**—William G. Hale, Professor of Law, University of Illinois, Urbana.

**EXECUTIVE COUNCIL**—Chairman, O. A. Harker, Dean of the College of Law, University of Illinois, Urbana; William N. Gemmill, Judge of the Municipal Court, Chicago; Major James Miles, Examiner in Charge, Efficiency Division, City of Chicago Civil Service Commission, Chicago; Edmund M. Allen, Warden Illinois State Penitentiary, Joliet; Harold N. Moyer, M. D., Chicago.

CHESTER G. VERNIER,  
Secretary, Illinois Branch.

**International Criminology.**—The author denies point blank that we have had or can have now any such thing as an international criminology. For, says he, we have no such thing as international law. Domestic law is a creation of man in society, not the outgrowth of impersonal evolution nor natural rights. Just as crime or a criminal does not exist in nature but is the creation of law, so we can have no international crimes, hence no international criminology until we have a real system of international law. "You cannot talk of delinquency or of breaking a bond when no bond exists; no more can you conceive of violating a law which has no life." But how about war? Is not war a "natural crime," so to speak, between nations? While it may be, indeed must be in time, it is not yet a crime. We are still, from the international standpoint, living in a state of what somebody has called "civilized anarchy." Our international policies proceed from the crudest motives of naive egoism. To be sure, certain writers, like the South American, Alvarez, talk of codifications of international law; but those codifications at this stage would simply crystallize the imperialistic policy of the great European States at the expense of the minor powers. Again, anarchy and the rule of force. The attitude of modern States toward each other lends color to the suspicion that the organicist theory of the state has somehow or other married Lombroso's theory of the born criminal, and that the offspring of this nightmare match are the degenerate, irresponsible personalities we call nations or States. According to Sig. Cimbali, we must in some way do for our international relations what the Declaration of the Rights of Man has done for nineteenth century internal relations. He concludes that the one way to begin a real international criminology is to make of every nation a juridic person; more than that, in the phrase of David Jayne Hill (whom by the way he quotes as David Hyne-Hill!) every nation must be conceived as a person judicable in both civil and criminal law. As to the concrete methods of attaining even this beginning he gives no suggestion. (*Giusseppe Cimbali, Rivista Female*, Aug., 1913.)

A. J. T.

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**ZUR FRAGE DER ANRECHNUNG DES IRRENANSTALTSAUFENTHALTES AUF DIE STRAFZEIT EIN BEITRAGE ZUR REFORM DER STRAFPROZESSORDNUNG.** By *Dr. Peter Rixen*. Juristisch-psychiatrische Grenzfragen. IX Band, Heft 7/8. Carl Marhold Verlagsbuchhandlung. 1914. pp. 91. M. 2.22.

The problem is whether persons who develop a mental disorder during the period of punishment should have to stay in a hospital for the insane counted as part of their penal service or not. In 1825 and 1841 the question was so decided that the period of stay at a detached hospital for the insane was so counted if the attack developed during the penal service and was recoverable. In the discussion of the imperial code (1877), the rule was conditioned by the question whether or not the person had induced the attack with the intention of interrupting the penal service. It was, however, possible for the executive authorities to suspend the punishment for the time being by a temporary discharge from the prison. This clause led to contradictory interpretations, and (pp. 31-34) actually contradictory decisions according to whether the patient was sent to the hospital with the request to be returned to the prison or without such a request. Moreover, the question was raised whether a person with mental disease could under any circumstances be considered fit to serve a term of punishment. In the actual practice the Prussian procedure used the temporary discharge (partly because there the insane are cared for at the expense of the poor-authorities, while the prisons are run at the expense of the State), while in other States the time spent in hospital was included.

Rixen is decidedly in favor of counting the time spent in hospitals for the insane; where the prisons have adequate provisions for mental cases the question does not arise, and where no provisions exist the prisoner should not be made to suffer additional detention.

ADOLF MEYER.

John's Hopkins University.

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**TRAITE THEORIQUE ET PRATIQUE DU DROIT PENAL FRANCAIS.** By *R. Garraud*, Advocate at the Court of Appeal and Professor of Criminal Law at the University of Lyon. 3rd edition, volumes I and II, Paris: Larose and Tenin 1913 and 1914. pp. 813 and 851.

Two years ago Professor Wigmore in a review published in this Journal of M. Garraud's great work on the "Theory and Practice of Criminal Instruction and Criminal Procedure," referred to the fact that the book which is the subject of the present review had superseded all others and was now recognized as the leading treatise on French criminal law. The first edition of this notable treatise appeared in 1888 in six volumes and was awarded the Wolowski

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prize by the Academy of Moral and Political Sciences as being the most important treatise in public law that had appeared during the preceding six years. The first edition was soon followed by a second and for the past three years there has hardly been an available copy in any book store. A third edition is now appearing and the first two volumes, aggregating nearly 1,700 pages, are out of press. The new edition is not merely a reprint of the old work corrected and brought up-to-date, but it is very largely a new work and as such it is easily the most important contribution to the French literature of criminal law that has yet been made. It is not only monumental in its scope but in its method of treatment it represents French scholarship at its best. And here it may be added that no race of scholars has made more notable contributions to legal literature in recent years than the French. The works of Garraud, Esmein, Glasson, Briissaud and Saleilles are fully up to the standard set by the best German scholars, if they do not indeed surpass them in some respects.

M. Garraud's work is by no means a treatise merely on French criminal law but a very large part of it deals with the general principles of criminal law—its origin and evolution, its relation to sociology and penology, its sources, etc. It is therefore a book not merely for the practicing lawyer but for the student of historical and sociological jurisprudence as well. As such it is a very timely treatise because, as the author points out, French criminal law has reached a crisis in its evolution and the old codes are being overhauled and brought into harmony with modern conditions.

It is impossible in a brief review like this to give even a sketch of the wide range of subjects treated in a work so comprehensive as M. Garraud's. It must suffice to say here that it is as exhaustive as any treatise on the criminal law can well be, that it bears every evidence of patient labor and ripe scholarship and that altogether it is a treatise that no student of criminal law can ignore. It is in every way a credit to French scholarship and deserves a place in every well equipped law library.

JAMES W. GARNER.

University of Illinois.

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GESETZ, GESETZESANWENDUNG UND ZWECKMASSIGKEITSERWAGUNG. ZUGLEICH EIN SYSTEM DER UNGÜLTIGKEITSGRÜNDE VON POLIZEIVERORDNUNGEN UND VERFÜGUNGEN. EINE STAATS UND VERWALTUNGS-RECHTLICHE UNTERSUCHUNG By *Walter Jellinek*, Priv. Doz. in Leipzig. J. C. B. Mohr, Subigen, 1913, pp. 375. M 12.

This volume contains a careful exposition of the underlying principles of German police laws and regulations, including the grounds on which regulations may be sustained and the grounds on which they may be set aside. The text is enriched by many practical examples. The volume is divided into three parts. The first part is devoted to the law, the second part to the application of the law and the third part to a consideration of the interpretation of the laws by administrative officers.

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The volume is valuable as a contribution to German legal police literature, and is interesting to the student of comparative administrative law. It possesses no practical value, however, for the American police officer and the American criminologist.

LEONARD FELIX FULD.

New York City.

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**DIRITTO PENALE E SNOI LIMITI NATURALI.** By *Ugo Conti*, Societa Typographica, Sardia, 1913. pp. 61.

This monograph, which was first published in *Studi Economici-giuridici* (Vol. VI Anno 1914), is a very interesting study. In his earlier writing Conti considered the limits of criminal law, which he believes to be not crime but "the likelihood of a man of becoming the author of a certain crime." He would take up the possibility of crime from both a social and an individual point of view. Every crime has two elements: the criminal fact and the criminal man. Then the criminal propensity of the man must be considered in punishing every crime. But even beyond this, criminal propensity *per se* is dealt with by the judge in cases of abnormality or attempts. In these cases as in the juvenile court, the act is administrative not judicial. As government is divided into the legislative, the judiciary, and the executive, so these three phases are reflected within the sphere of penal law. And the administrative or police function is not by any means the least important. Of course, all police power is not within the sphere of criminal law, but there is a large portion, where administrative criminal law performs a socially defensive function which is that of the police.

This is but another way of approaching the question of imputability, with its connection with the punishment of the delinquent by penal statutes. To allow or require the judge when he finds not guilty, either through failure of execution or lack of mentality, to consign the defendant, as dangerous, to some place for the protection of society, may be considered as an administrative act of police, or as a function of penal law, *viz.*: social defense. It is a new way of facing the now old question of delinquency *versus* guilt.

JOHN LISLE.

Philadelphia.

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**MAGGIORE ON RESPONSIBILITY.** *Volonta o Responsibilita Saggio di Imateoria Idealistica dell Imputabilita Penale.* By *Guiseppe Maggoire*, *Il Progresso del Diritti Criminale*, Jan.-Feb., 1914.

Responsibility is, philosophically, property in an action. A man is responsible for his own acts. The difficulty is in the determination of the objective. This question St. Augustine, with his doctrine of grace and Rousseau with his social responsibility have both failed to solve: for, how can either man created by God, or man, as pictured by determinism be responsible? Neither concept gives man any determinative quality or force. Creation implies predestination. Determination excludes free will. And the antimony is not destroyed by

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any of the many compromises of orthodoxy and materialism "compromises which recall one of the most complex questions discussed before Salisbury in the XI century; whether the pig led to market was led by the rope or by the man, which problem when solved did not alter the fate of the poor animal." But, all moralists and criminalist in dealing with responsibility, have preferred to deal with the rope, *will*, and whether they consider it free or bound, autonomous or heterogenous, they have considered it distinct from mind and knowledge and make it the cause. Not only the classical school and the positivistic school, but all the intermediate theories of freedom of intellect, voluntariness, intimidability, normality, personal identity and social resemblance have all followed this plan. Philosophy must show the error in looking upon will as a distinct faculty. "Will and intellect, therefore, in so far as we think of them as opposed, are two powers (empty possibility of knowing, and empty possibility of acting). The absolute knowledge is where action does not exact a knowledge action. Real will is even in vulgar deception, nothing but the actuality of my being. My will is what I am and do. That other will which we often call intent, hope, a bundle of good intentions (which paves a well-known path) is non-reality to which we lend a certain moral value, p. 21. Will, as distinct from thought, is no bridge for imputability to cross. It cannot be subjective. *Facultas agendi* may be called will but then it is not action. Action may be called will, as it is, but this will is no longer distinct from thought. Action is but a phase of human life. "Man lives in his acts and action is the sum or living universality of man" (p. 22), and thus the subject is merged with the object. Thought is action, without any surplus. The agent must be a part of the action imputed to him. Without this immanence, no man should be made to answer for an act. This immanence does not end with the accomplishment of the facts; for the agent still lives in the existing consequences. "I am not to be called to account for having at some other time committed a robbery or a murder, but because notwithstanding the lapse of time, forgetfulness, repentance and pardon, I am the man whose existence is stained by robbery or murder, indelible even by all the waters of the ocean" (p. 22).

Responsibility is nothing more than the intimacy of my facts with my being or the indissolubility of my acts and my spiritual being. "I have done this" results in this being my act, a part of me. Thought and idea are always present, actuality is always absent; they are the same thing from two points of view. The omnipresence of thought supposes the omni-absence of the thing thought. Either, everything, including will, is thought, which justifies responsibility or else everything, especially will and action, are out of the realm of thought and their responsibility is an illusion. Thus responsibility is a concomitant of consciousness. Auto-consciousness is also *auto-will*. Hence, responsibility is universal, but this does not mean that it will result in equal tests for all. Universal is not identical in effect. The old maxim "*sum cuique tribuere*" will still be applied.

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There is no mere physical imputability distinct from the psychic or moral (p. 25). For responsibility is based on auto-consciousness, which unites act and intent. Duress as a plea is then explained. But what of the case of so-called unconscious action, where, for example, a sleeping mother smothers her child? Is this not her act? If so, is she not responsible? But the answer is clear. As in the case of duress, *quamvis si liber essem, noluissem, tamen co-actus volui*, so in the case of unconscious action, precaution could have been taken. The agent *volens*, did the act in every case, and it is imputable to him because of the *voluntas*, but regard for human frailty makes us both irresponsible, where foresight could (sic) not have foreseen or duress is real.

"If responsibility is the inseparable essence of being, irresponsibility is a *non-esse*" (p. 25). Thus facts, not acts, are casual. But, no fact being uncontrolled, it follows that a fact unconnected with mind is non-existent. This destroys the theory that punishment is social defensive reaction. That responsibility is universal (but not identical) simply means that everyone must bear the consequences of his act. This is true. Social defensive reaction is generally taken to mean, that without imputability everyone must answer for certain acts. The error is apparent.

There is imputability, because he (the subject) is a part of the acts (predicate). Social defensive reaction is a phrase used to overcome the undue leniency shown criminals today by the superficial followers of St. Augustine or Rousseau. And, as social defensive reaction would punish all, the lame, the halt, and the blind, but with a difference, in the name of society, not requiring proof of more than physical imputability, so Maggiore would punish them, holding that the physical imputability through his theory of man's existence in his act, shows the existence of full imputability.

"Responsibility is not quantitatively but only qualitatively divisible" (p. 29). Punishment should be qualified to suit the delinquent. But, its quantum can always be disregarded. It is the quality which effects the cure. And a man, whose auto-consciousness has entered into crime is never what he was before. In some form he should be distinguished, as he in fact is throughout his life. This is the natural conclusion.

Penal responsibility should be governed by the same rule as in the civil courts. Irresponsibility should be made the exception. Whatever a man did, he should be made to pay the consequence of it, and because of delinquency, his punishment should be qualified for his cure.

JOHN LISLE.

Philadelphia.

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MANUAL FOR PROBATION OFFICERS IN NEW YORK STATE. *By the State Probation Commission.* 1913, pp. 251.

This book is not a dry set of rules or formulae for the guidance of probation officers, but it is a compilation of the laws of both general

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and local chronologically arranged with an exhaustive discussion of their application, with numerous references where the courts have construed them, or where opinions have been handed down by the Attorney-General. The work has been done so well that it can be used as a guide and adapted by other states in the various aspects of probation work.

The book is divided into three parts. Part I, citing the general laws with the date of enactment, and the local laws for the cities of Buffalo, New York, Rochester, Syracuse and Yonkers, also for the counties of Ontario and Monroe, the text of these laws being given in appendix A, Part III. The wonder is that the State Solons could not enact a general law for cities of the same class, and uniformity for all counties.

Part II gives an analysis and explanation of probation laws as they pertain (a) to the appointment of and compensation of probation officers; (b) to court procedure and practice concerning probation; (c) to duties, powers and methods of probation officers; (d) to records, reports, forms, accounts and statistics; (e) to the State Probation Commission; (f) to miscellaneous provisions of the law.

In the seven appendixes of Part III are given the text of the laws; statistics showing the growth of probation in New York State; Illustrative Case History; Literature published by the State Probation Commission; Sample set of questions used in written examination for probation officers, etc.

Probation will be a success or a failure according to its application; then it may be well to look into what is required of the probation officer and the probationer as set forth in the manual. The text is silent on the subject of the qualifications of the court. Is this a negligible quantity?

All salaried probation officers must qualify for their places through civil service examinations, in city positions through the city civil service commission, for all other positions through state examinations. Again it looks as if it would be better if all were required to take the same examinations. The appointment of probation officers is made by the court, and the candidate holds his office during the pleasure of the court.

The statutory duties of probation officers are: (a) when so directed by a court or magistrate, to inquire into the antecedents, character and circumstances of defendants and the mitigating or aggravating circumstances of their offense, and to report thereon in writing; (b) to furnish probationers with a statement of the period and conditions of their probation, and to instruct them concerning the same; (c) to keep informed concerning the conduct and condition of probationers; (d) to aid and encourage probationers by friendly advice and other means to bring about improvements in their conduct and conditions; (e) to report in writing at least monthly to the court or magistrate concerning the conduct and condition of each probationer; when a probation officer receives a probationer on transfer from a probation officer in another court, he shall report concerning the conduct and condition of such probationer at regular intervals

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to the court or magistrate making the transfer; (f) to keep records of his work; (g) to keep accounts of all moneys collected from probationers, to give receipts therefor and to make at least monthly reports thereof; (h) to perform such other duties in connection with probationers as the court or magistrate may direct; (i) to make such reports to the State Probation Commission as it may require; (j) to act, when so requested by the county judge, as parole officer, over persons paroled under provisions of the Criminal Code.

Under ordinary court procedure no preliminary examination is made concerning the defendant and frequently the verdict of the court is an absolute miscarriage of justice. The purpose of the preliminary examination is to see whether the defendant should be put on probation or dealt with otherwise: If he is a child it may be ascertained if he attends school, has he a good or bad home, is he obedient, where does he spend his evenings, has he any bad habits, has he any mental or physical defect that tends to delinquency, if he is too old to go to school, does he work at profitable employment, is he truthful, does he drink or gamble, is he likely to become a menace to the community; in all these investigations the defendant need not give testimony against himself, and the facts are not learned for the purpose of obtaining conviction, but for the purpose of ascertaining what will be the best way to dispose of the particular case, for if the information is correct, the court can determine whether the offense was malicious or in a degree excusable and can make its findings accordingly.

The probationary conditions are clearly set forth and are worthy of careful consideration.

(a) That the probationer shall indulge in no unlawful, disorderly, injurious or vicious habits;

(b) Shall avoid places or persons of disreputable or harmful character;

(c) Shall report to the probation officer as directed by the court or probation officer;

(d) shall permit the probation officer to visit him in a reasonable manner at his place of abode or elsewhere;

(e) Shall answer any reasonable inquiries by the probation officer concerning his conduct or condition;

(f) Shall, if a child, of compulsory school age, attend school.

(g) Shall, if an adult, or if a child but not required to attend school, work faithfully at suitable employment;

(h) Shall remain or reside within a specified place or locality;

(i) Shall abstain for a reasonable period from the use of alcoholic beverages, if the use of the same contributed to his offense.

(j) Shall pay in one or several sums a fine imposed at the time of being placed on probation;

(k) Shall make reparation or restitution to the aggrieved parties for actual damages or losses caused by the offense;

(l) Shall support his wife or children.



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All persons will agree that it is just that the damage done through malicious mischief should be paid for, or if goods are stolen, they or their equivalent should be returned; care is taken not to make the court a collection agency, the primary object being to teach the probationer a practical lesson and to exert a reformatory influence. Whatever the psychic effect is on the probationer, the aggrieved party will be satisfied to have restitution or reparation in the case.

The plan of compelling a delinquent husband to work and to support his wife or children is both reasonable and humane, and more logical than to imprison him, thus causing the family to suffer for the negative deed of the father. Some plan should be worked out so that when the supporter of the family is put in prison for a term of years through the commission of one of the greater felonies, the culprit should be obliged to work at profitable employment and the proceeds of his labors should go to his dependents.

The Commission recognizes the value of reliable statistics and has a series of forms, for records, reports, accounts and statistics consisting of thirty-one blanks to be used by the probation officer. If these blanks are faithfully used, the result will be accuracy and uniformity in the statistics of New York on the subject of probation. What is needed next, is some genius, or some omniscient State Commission to devise a plan to get reliable and accurate statistics on all phases of crime, its causation, treatment, etc.

Probation applies to all persons not guilty of a previous felony, who are found guilty of a crime whose maximum sentence does not exceed ten years. The wisdom of probation is shown in the court procedure, criminal procedure is dispensed with and chancery proceedings are had; the suit is not styled the people of the Empire State against John Doe, aged 14 years, but the court proceeds on the sensible theory that the State can find better business than crushing a defenseless child, but does act upon the theory that said child is the ward of the State, subject to its discipline and protection, which the court should give the child under the conditions disclosed in the case.

The first probation law was passed April 17, 1901, and no fewer than thirty acts and amendments have followed it; the present State Commission was created on June 6, 1907. Statistics on probation for the years 1908-1912, inclusive, are given in appendix B, part III. This shows that 44,562 have passed from probation, 32,510, or 73 per cent, having shown beneficial effects from their probationary experience.

This report shows commendable results, and best of all, it re-established those delinquents without placing the brand of felons on them, a stain that it takes generations to wipe out.

THOS. M. KILBRIDE.

Springfield, Illinois.

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**ACUTE POLIOMYELITIS.** By *Dr. Ivan Wickman*, Stockholm. *Nervous and Mental Disease*, Monograph Series, No. 16. New York, 1913. Pp. 135. \$3.00.

Infantile paralysis, or, as the disease is technically known, acute poliomyelitis, is one of the scourges of infancy and childhood. Its ravages are the more serious for the happiness of the child and its parents for the reason that it results in paralysis which cripples and deforms, more often than in death. By the investigations of Lansteiner, Flexner, Wickman and others the pathology of the disease has been fairly clearly worked out. The cause of the disease is an infecting organism which is very much smaller than the smallest of observed, known, pathogenic organisms. It is so small that it passes through certain filters by which ordinary bacteria are removed from solutions in which they grow. Flexner has shown that it is possible to transmit the disease to monkeys by inoculating them with filtered virus. The commonest pathway of infection seems to be the nasal mucous membrane. The exact manner in which the organism gains access to the central nervous system is not known. Once established in the central nervous system, the typical damage done is the destruction of the cell bodies of the large motor nerve cells which lie in the anterior portions of the gray substance of the spinal cord. It is from this feature of the pathological picture that the disease receives its name: acute anterior poliomyelitis, which may be paraphrased for the benefit of non-technical readers as an inflammation of the anterior portions of the gray substance of the spinal cord. The symptoms of the disease are the logical concomitants of the pathological causes. The fever, malaise, nausea, vomiting which precede the appearance of the paralysis are indications of the invasion of the organism. The paralysis and atrophy of the muscles result from the destruction of the nerve cells. Recent study of the epidemic forms of the disease compels the recognition of other manifestations of the disease than those usually described. A curious form of paralysis, known as Landry's ascending paralysis, is characterized by a paralysis of the lower extremities which gradually creeps up the body, with a final involvement of the respiratory mechanism that results in death. Again, the brain may become involved, with the production of an encephalitis which, if it does not kill, results in feeble-mindedness. Fortunately Flexner has produced a serum which is promising good results.

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**DIE NATUR DES ECHTEN UNTERLASSUNGSDELIKTES UND DIE FOLGERUNGEN DARAUS.** Von *Dr. jur. Adolf Rohde*. Leipzig, Verlag von Veit & Comp., 1913. Pp. vi, 100.

The philosophical analysis of recent years, together with the results of historical investigation and the revelations of sociology with reference to the dependence of crime upon general social, political, and economic conditions, have led to the downfall of the older theories of

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natural rights and *laissez faire*. We are today emphasizing afresh the fact that the state is not merely a great police force, but that it has certain very positive tasks and ends and that it therefore imposes upon its members duties to do, as well as commands to refrain. The subject of *Unterlassungsdelikte* is, therefore, a very timely one. The author of the present treatise, however, is not concerned with the more ultimate problems suggested by his subject, such, for example, as the final intent and purpose of positive laws, and whether the state can by any possibility do more for its members than merely to remove hindrances to their development, either directly by breaking down these hindrances or indirectly by setting up hindrances to hindrances. The treatise confines itself to the matter of fact point of view that we actually have positively formulated laws as well as prohibitions, and that an individual, therefore, may be guilty of omission as well as of commission. Even when the problems that arise in the course of discussion seem of themselves to invite to a somewhat broader consideration, the author steadfastly refuses to follow them beyond what he regards as the strictly legal, as contrasted with the sociological and the philosophical field of interest.

An illustration of his point of view and its limitations is offered by his argument that, both from the standpoint of existing law and from that of the individual, positive laws possess a character peculiar to themselves—that a “thou shalt” is not perfectly convertible into a “thou shalt not,” or vice versa. A prohibition, he maintains, requires no definite results and thus may be obeyed either by remaining passive or by occupying oneself with other matters; it is disobeyed only by the doing of that specific act which is forbidden. A positive command, on the other hand, can be carried out only by appropriate activity, and may be violated by passivity as well as by other modes of activity. At first sight, indeed, there appear to be many exceptions to this, as, for example, the ordinance “vehicles to the right,” which is statable as “no vehicles are allowed on the left.” Such apparent exceptions rest on the fact that the command is not strictly intended to be categorical, but to presuppose the hypothetical “if you wish to act at all,” and thus to stand in contrast merely to some other mode of activity with which it stands in a relation of mutual exclusion. Presupposing “if you act at all,” “act in this way” is, of course, equivalent to “do not act in this other way,” where there are only these two ways of acting. Now, the author is undoubtedly correct in contending that it is only in a disjunction whose members are mutually exclusive that an affirmation of the one is equivalent to a denial of the other; and, so long, of course, as we do not pass beyond the bare statement of the law, these conditions are only rarely present. Nevertheless, it remains an interesting and an arguable question whether the law, just in proportion as it constitutes a rational system, does not rest on and imply such disjunctions, and whether the individual would not so understand particular laws just to the extent that he came to understand their true meaning and purpose and was not merely conscious of them as existing commands imposed by a power capable of compelling obedience.

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Passing to the organization of the treatise, we find, in addition to an introduction and a fairly extensive bibliography, three parts, entitled "Command and Duty," "The System of Positive Duties," and "Conclusions for Criminal Law." Each of these parts is divided into a number of sections, which in turn fall into innumerable subsections, their divisions, subdivisions, etc., etc. As a result of this method of treatment, there is not only considerable repetition, but the effect is very choppy, and while quite a variety of problems are touched upon, few are analyzed in careful detail or with due consideration of upon, few are analyzed in careful detail with due consideration of their various implications. Obviously it is impossible, within the compass of a brief review, to give a resume of the various points that are dealt with in a treatise of this nature. The distinction, however, of which most use is made, both constructively and in criticism, is one between *Zu widerhandeln* and *Nicht (anders) handeln*, between intentionally acting in a way contradictory to a positive law or so as to make action in accordance with it impossible, on the one hand, and simply not acting at all, or perhaps, more accurately expressed, doing things out of all relation to the required duty. The former are really crimes of commission (*Begehungsdelikte*); only the latter are crimes of omission (*Unterlassungsdelikte*) in the proper sense of the word. Here, again, the law commanding a thing to be done may either more or less arbitrarily set a time limit or the time when the act is to be performed may depend upon undeterminable empirical conditions, as, for example, when the law prescribes that the police be notified by an individual as soon as he gets knowledge of a contemplate crime. In the former case, it is a penalty rather than punishment that is exacted, and pressure of various kinds may be brought to secure compliance with the law, even after the expiration of the time limit that had been more or less arbitrarily set. In the latter case, however, punishment of some kind remains the state's only recourse, and for this reason it is here alone that we have *Unterlassungsdelikte* in the strictest meaning of the term.

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EDWARD L. SCHAUB.

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DIE RECHTLICHE NATUR DER ANSTIFTUNG. Von Dr. Jur. Wolfgang Röhricht. Strafrechtliche Abhandlungen, Heft 163. Breslau, Schlettersche Buchhandlung, 1913. Pp. iv, 55.

The fondness of the German mind for sharp, clear-cut distinctions, even though at the cost of a certain artificiality, is again suggested by this treatise on instigation. Whereas our own criminal law sometimes refers to all who are in any way concerned in the commission of a crime as accomplices and seems to differentiate only principal, co-principal, and accessory, the Germans have worked out a number of other distinctions for which we do not even seem to possess exactly equivalent English terms. Several centuries ago a sharp line was drawn between the *Täter* (principal) and the *sonstigen Beteiligten* (other participants) and somewhat later the latter were divided into *Mittäter* (co-principal) and *Teilnehmer* (accessory); gradually, also, the term *Akzessorität* came into use, and *Teilnehmer* came to be classified

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more or less vaguely into *Anstifter* (instigator) and *Beihelfer* (helper, accomplice). The complaint of the author, however, is that *Anstiftung* and *Beihilfe* have been treated for the most part simply as specific cases of *Teilnahme*, without ever having been subjected to rigid analysis. But, apart from a demonstration that the two more specific terms are sufficiently alike to warrant their being subsumed under the more general concept *Teilnahme*, and discussed from this point of view, the traditional treatment of instigation is but a *petitio principii*.

If, however, the author has led us by this introduction to his treatise, in conjunction with the wording of its title, to expect a careful analysis of the nature of instigation in general and of its proper relation, from a legal point of view, to the other factors in crime, a certain disappointment must ensue. The various points which he attempts to make are not always clear; indeed, the exposition is frequently quite tangled. With the exception, moreover, of part of the second chapter, entitled "De lege ferenda," the discussion is of the nature of "nomosophy," to use Dean Wigmore's proposed terminology, rather than of "nomoscopy."

Under the first caption, "De lege lata," we have a discussion of the status of instigation in the existing German code. This code has been interpreted by some scholars, among them Bauer, as regarding instigation as an act complete in its own nature, without relation to any results that might spring from it. Instigation, however, is not punished unless a criminal act ensues. When this occurs, therefore, it would appear that the guilt of another is simply carried over to the instigator who must thus suffer for a crime committed by some other party. The author examines with some care the various arguments advanced in support of this view, and finds them invalid. One of the most significant criticisms that he urges is the failure of Bauer and his school to distinguish carefully between "punishable act" (*strafbare Handlung*) and "punishability of an act" (*Strafbarkeit einer Handlung*) as these expressions occur in various provisions of the code. It is true that an instigator is punishable, under German law, only if a punishable act is done by one whom he has incited; and it is true, furthermore, that under this code an act is punishable only when it is not merely in external violation of the law, but is also the deed of a person who was not physically overpowered and thus compelled to do it, nor threatened with violence to himself or his family and thus mentally overpowered, nor, in the third place, incapable of making a voluntary decision. Yet, even though an instigator is punishable only on condition that the crime to which he has incited has been committed by a person who is capable of free decision, this does not prove, as Bauer supposes, that the instigator is punished for the guilt of another. That this is not a correct interpretation of the law seems clear when we bear in mind that a punishable act does not necessarily involve the punishableness of the principal. Bauer has overlooked the fact that there are *straflose strafbare Handlungen*—acts that are punishable, but for which the principal, for certain reasons, is not punishable. In such cases, however, the instigator is punishable; evidently, therefore, he is punished independently of the principal.

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Thus, while the author holds that the punishment meted out to the instigator is imposed strictly because of his own deed, he nevertheless refuses to accept the antithesis of Bauer's view held, for example, by Herzog and Kohler. These writers insist that instigation is punishable whenever it gives rise to an act which is in external violation of the law. Here the author agrees with Bauer in maintaining that there must first be a punishable act and that this involves, on the part of the principal, the three subjective conditions noted above. Thus the present treatise steers a middle course between the two extreme interpretations current in Germany, invoking in its support the authority particularly of Hugo Meyer and Birkmeyer as well as that of several judicial decisions.

Before pointing out in a concluding chapter that the doctrine of instigation which he finds in the existing code is also substantially maintained in the new penal code proposed for Germany, Dr. Röhrich breaks a lance in its defence by insisting on the unsatisfactory character of various divergent views. Both practical and theoretical considerations make impossible the notion that instigation is a crime in itself, complete both objectively and subjectively with the act of instigation, and therefore punishable quite independently of any act or attempted act on the part of a third party. The relatively recent Norwegian code has adopted still a different view, regarding the instigator as a co-principal. But it is not difficult to see objections here also. How can one who suborns another to perjury be himself, strictly speaking, a co-principal in the perjury, or a citizen who incites an official to a criminal breach of trust be a co-principal in a crime which cannot exist except for an official? Moreover, the Norwegian code is not successful in holding consistently to its view of instigation, for in dealing with the problem it also finds it necessary here and there to take into account various considerations with reference to the principal.

Perhaps the basis of these views, as well as of those of Bauer and Herzog, is the fear of construing the principal as a mere instrument in the hands of the instigator instead of as an agent possessed of free self-determination. Hence they all seek in their several ways to avoid tracing any connection between the will of the instigator and the crime that is committed by the one whom he has incited. Once, however, it is recognized that self-determination and the making of genuine decisions do not imply action without motives, there can be no difficulty in holding the doctrine of freedom, on which existing law is based, and nevertheless tracing to the instigator, as Röhrich does, a certain responsibility for the outcome. The deed, though realized by a third and a self-determined person, is nevertheless also an objective expression of the instigator's will and intent and for it the instigator may properly be held directly responsible. Yet, even so, certain difficulties remain. The actual crime, which apparently must constitute the basis of punishability, may differ widely from the end that the instigator had in view—it may not only be much more serious, or on the other hand, more trivial, but even of quite a different nature, depending, as it does, on the intelligence and general character of the third party as well as on the shifting empirical conditions with which he has to deal. More-

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to it, as the author shows by numerous illustrations. Even the specifically pedagogical researches derive their method from psychology.

The jurist meets with acts of will, their causes and results, in connection with the making of contracts and other legal papers, in criminal acts, including those of omission, in the question of responsibility and diminished responsibility. The only science that deals with the normal course of human volitions is psychology. In reaction-time experiments it investigates the simplest acts of will, more complex ones in reactions involving recognition, discrimination, and choice. It introspectively analyzes the most complex volitions and seeks to determine experimentally their relation to thought and temperament. It determines the influence of alcohol, hypnosis, suggestion. It studies the psychology of crowds, the social and individual conditions of crime, the influence of race and religion, of occupation and social position, the relation of crime to prostitution, heredity, education, culture, age and sex. It clarifies the idea of responsibility, showing that free-will is in no way identical with indeterminism, and that the now indisputable theory of determinism furnishes a sound foundation for a criminal law based on freedom of the will. It is seeking to discover objective criteria of guilt and innocence, the best known method thus far suggested being the so-called association method, which the author describes and criticises. Though this method is by no means perfected, yet the jurist should have knowledge of its present development. Important for him also is the psychology of evidence. The best intentioned declarations of witnesses are not always reliable, and psychology seeks to determine within what limits they can be relied on. There are universal tendencies to falsify experiences in the direction of typical experiences, to remember best the facts that have aroused interest, to overestimate short times and underestimate longer ones. The testimony of children is less reliable than that of adults. The validity of testimony is dependent on the manner of questioning. Questions involving false assumptions possess a strong suggestive power. Psychologists have already been called in as experts in a number of trials in Germany.

In the field of industry many useful experimental researches have been undertaken. The relation of rhythm to work, the influence of fatigue, the fluctuations of attention during the day and the week, have been studied and usefully applied. The practical importance of psychology for the choice of occupation and for increasing industrial efficiency has been shown by remarkable examples.

For both the historical and the critical study of philosophy, an intimate knowledge of psychology is as essential as is a knowledge of mathematics for the physicist or of physics for the chemist. Volumes might be written on the theories of philosophers that are disproved by the results of psychological science, as the author attempts to show by definite examples.

Whoever may be interested in any of the matters briefly outlined above, will find in the original paper numerous references to the literature of the subjects and can thus inform himself further as to the extent of psychological progress in each field. In conclusion, the

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author urges more wide-spread instruction in psychology, the founding of new psychological institutions, and great improvement of facilities in those already in existence.

In the second paper here considered, Professor Marbe applies psychological principles to a question of legal evidence.<sup>1</sup> He was called as an expert at the trial in 1912 of a certain unmarried school-teacher, forty years old, of acknowledged ability and of best reputation, accused of immoral conduct toward seven of his pupils, young girls nine to eleven years old. These children testified at the trial, after having been subjected to several previous official examinations. Only two of them held to their accusations without change throughout, and these two were shown to be entirely untrustworthy. Moreover, their assertions were contradicted by the physician's examination of their physical condition. None of the children told their own stories, but merely answered Yes and No to questions put to them. There was a faction in the village hostile to the teacher, the existence of which must have influenced the children to some extent. The defendant was acquitted.

In his report on the case, Professor Marbe draws attention to a number of important psychological principles and makes some definite recommendations. Suggestive questions lead to false answers and should be avoided. As one of the mothers remarked at the trial, "The attorney-general said it first, my daughter merely said it after him." Agreement in the testimony of independent witnesses cannot always be taken as evidence of truth, as experiments and numerous cases have proven. Children's testimony is unreliable, especially that of girls, and especially in regard to sexual matters, which are to them so mysterious that imagination is easily aroused and the child readily constructs personal experiences out of what he has only heard about. These facts are supported by references to experimental literature. There is an abundance of cases to show that autosuggestion leads to all sorts of assertions by children; and the author cites at length a number of these cases.

The statements of the children at their several examinations are subjected by the author to minute analysis and comparison. He demands important changes in procedure, whenever children are judicially questioned on sexual matters. Whenever possible, depositions should be taken at the home of the parents, with all possible care and delicacy, instead of bringing the children into court as witnesses and thus subjecting their moral ideas to inevitable damage. Affirmative testimony by witnesses as to the trustworthiness of children is to be accepted with great caution. The children should be examined but once, and never by any but the highest official or by an expert. Both questions and answers should be stenographically reported, and the report submitted, whenever this is demanded by either side, to the judgment of a psychological expert.

Brown University.

E. B. DELABARRE.

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<sup>1</sup>See last issue, page 147.



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## EDITORIALS

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### THE PRACTICE OF LAW: IS IT A PROFESSION OR A BUSINESS?

Nothing that concerns the integrity of the legal profession is foreign to this JOURNAL. It has time and again lifted its voice for purity and honesty in a profession that is going through a critical period.

The vast transforming changes that have taken place in the business and industrial life of the country have reacted upon the practice of law. Because of the added reasons of congestion, conglomeration, and quality of persons in a city, cities have grown to be the plague spots of the commonwealth. Experienced lawyers like Theron Strong of New York bear witness to the metamorphosis of the legal profession into a commercial business. And all within the memory of middle aged men. Twenty-five years ago the bar of New York city was eminently respectable. Today it is honeycombed with shysters, ambulance chasers, pettifoggers, persons unmindful or ignorant of traditions, bent with immorality, and heedless or defiant of law. Men who value their rectitude more than their success are abandoning the profession for more congenial fields; and many are being dissuaded from entering what is generally considered the graveyard of truth.

The New York County Lawyers' Association was born years ago. The largeness and the importance of the work it has done through its committees and its members working in other ways cannot be overestimated. It began with the democratic idea of enclosing within its fold the great majority of the legal profession in New York city. This was by no means an easy task because of the indifference of the members of the profession to its responsibilities. This indifference it was the hope and the labor of the association to change to warmth. It has had the usual Grievance Committee. But very soon the need for more inclusive work became manifest. It is the duty of the profession not only to expel members who prove unworthy, but also to see to it that no unworthy member enter it, and that no one without the requisite license be allowed to receive the emoluments of the office of lawyer without being subjected to its responsibilities. And so, a committee, the first one, I believe, of its kind in any part of the country, backed by such a powerful organization, came forth bearing the name of the Committee on the Illegal Practice of Law. This committee has aroused the profession, and the public. It has struck terror into the hearts of men who for long preyed upon the innocent public, and has protected large

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numbers of laymen who otherwise would have fallen victims to them. Soon another committee was formed; it, too, was born of the peculiar conditions with which New York city is surrounded. The number of ethical questions raised is so great, and the quality sometimes so difficult of answer that a Committee on Professional Ethics was instituted. This committee is now known throughout the country because of the excellent work it has done; and the questions asked of it and the answers have been widely published.

Recently Question 47, containing many divisions and subdivisions, was published with the answer to it. The *Commercial Law Quarterly* immediately took up the challenge and published the New York County Lawyers' Association Committee's question and answer, and followed them with a categorical and flat denial in the shape of a discussion, and substitute questions and answers. To bring the matter clearly and squarely before the reader, I append the main questions and answers of both the committee and the *Commercial Law Quarterly*.

The question referred to:

"Question 47—(N. Y. Co. Lawyers' Assn.) IX. (a) May A. B., a lawyer having a commercial law practice, pay a fee to M. W. O., a list made up of lawyers, and in which collection agencies appear, for the privilege of having his name appear on such lists?

"Answer—Yes: provided the form of the announcement is not otherwise objectionable. (See I (b) advising the insertion of a plain professional card); provided also that the amount he pays to M. W. O. is not determined by the amount realized by A. B.

(b) "Does it make any difference as to its professional propriety that the list is used exclusively for and by lawyers, or is intended to be circulated also among laymen? Answer: No.

(c) "Does it make any difference as to its professional propriety that the charge of the list varies according to the amount of business received by the lawyer through such a list? Answer: Yes: since it necessarily involves a division of the lawyer's professional fees in consideration of the securing of employment for him by the person with whom he divides his professional fees.

(d) "Does it make any difference that the list in connection with its publication or circulation maintains a complaint department at its own expense, adjusting differences arising out of charges earned or claimed, and issues for each representative in the list a surety bond guaranteeing the faithful performance of duty? Answer: Yes: it is derogatory to the essential dignity of the profession to seek employment by offering, or permitting another to offer, a bond to guarantee his honesty or efficiency."

The *Commercial Quarterly* retorts with the following: Question 2—(p. 17) Aug.-Sept.-Oct., 1914.

"Is it proper for attorneys to divide fees with attorneys and collection agencies and managers from whom they receive business? Answer: Yes.

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"Is it proper for an attorney not representing a creditor to receive of an attorney for the debtor a list of claims against the debtor for the purpose of such receiving attorney becoming attorney for such creditors? *Answer:* Yes.

"*Question 16* (p. 19). May an attorney who receives a claim from a collection agency and performs legal services in connection therewith, divide his fee with the collection agency? *Answer:* Yes.

The *Quarterly* publishes a long list containing the names of several thousand attorneys with offices in all of the states of the Union, with descriptions of their qualifications, which, in some cases, go beyond the requirements of the American Bar Association, and the New York Bar Association; and also guarantees the faithful performance of duty by the attorneys in the list.

The cleavage then is evident. The questions before the profession are these:

Shall fee splitting with laymen be permitted?

Shall solicitation of law employment be allowed, similar to the solicitation for the purchase of rubber?

Shall the guaranteeing of a lawyer's honesty and efficiency, either by himself or by another, be permitted?

To put the question in a more general way:

Is law a profession or a business?

May the methods of business be carried over to the practice of law?

If not all methods, may some? And if so, what are they?

Is law for private gain, or public advantage?

Is law a privilege, or a right?

Physicians and surgeons have gone on record against fee splitting. But the new type of lawyer would not only allow fee splitting among attorneys (a thing which *under proper safeguards* I see no reason for not permitting)—but allow laymen to participate in the gains of a profession to which they are not or cannot be admitted. Again, the practice of law is already so distasteful that business men with business sense, and no pride in the traditions of a noble profession, are swamping the few who still strive to maintain its pristine vigor and purity. Shall we allow the leaven to become too small for the lump? The practice of law has become a wild scramble for cases. This, it may be said, is the struggle for existence and the survival of the fittest. But such a mad struggle, and such a survival of the fit is derogatory to the profession, and harmful to the community. It may pay to advertise in sonorous and stentorian tones, but it is not lovely. Modesty no more exists: the bluff business man, clad in shining armor, and with mailed fist, or clothed in suave, insinuating, pietistic garb, has displaced it. The very terms of the law are business terms: the whole vocabulary of



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the lawyer is a business vocabulary. The law has succumbed to the machine guns of business—business the omnipotent, the omnipresent. Our everyday conversation is full of business phraseology. Even the language of our hearth has lost its former sweetness, delicacy, and spirituality, and acquired the raucousness, the coarseness, and the vulgarity of chesty business.

Once more, nothing shows the depth of the descent into Avernus clearer than the guaranteeing of the honesty of lawyers. The fact that associations, or individuals will be bound for the good conduct of lawyers manifests not only business enterprise carried into law practice, but is revelatory of a state of the profession which is none too hopeful. The increasingly large numbers of frauds committed by attorneys, especially in large cities, is appalling. The breaches of professional ethics, morals, and law perpetrated by them are paralyzing. There are breaches of trust, there are bold-faced swindles, and secret thefts. Not a day passes but that a practicing lawyer has some instance of this truth brought to his attention. The state of affairs is so bad, the corruption has become so ingrained that even when attorneys are taken over by the state from private business these attorneys do not transfer their allegiance, or if they do, they bring with them the pestilence of fraud, larceny and blackmail. A banking institution recently failed. The State Banking Superintendent assumed control for the benefit of the depositors. The whole real estate department of the bank that had been doing a rustling business for some years was taken over by the state to save expense and time. An attorney in this department, to my knowledge, made an arrangement with the attorney for the lessee of a house owned by the bank, by which, for a consideration of two hundred dollars, he would delay an action for summary eviction for two months, and enable the lessee to obtain two months' rent, amounting to one thousand dollars, and keep it. And he was a man of his word; the depositors were defrauded.

Such things as these are so common as not to cause surprise. They are in the day's happenings, and no lawyer is taken aback by any such information. What are the causes and what the remedies that may be applied? These are the important questions.

No one can accuse me of being a rabid hater of immigrants. On the contrary, my writing upon the subject of immigration shows a tenderness to them. Nor do I wish to be understood as holding the opinion that natives of America are universally moral. Indeed, it is plain that modern business and large cities have contaminated even those who might be expected to know better: even those whose family traditions, and social connections would seem to prove insuperable obstacles to

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crime and dishonesty. But there is no doubt that the problem of evil in the profession has been augmented, and magnified, till it is enormous and threatening to very existence, by the presence of large numbers of half baked lawyers who, though shrewd, are completely unscrupulous: lawyers whose preliminary education has been obtained in six months, and whose law course has extended over two hours an evening, five evenings a week for thirty weeks; who came to this country when they were young or middle aged or old; who do not speak English and never will; who scrimp and save for a few years and allow their families to do the same, till all too soon they rise into the clear air of the heavenly ether, called law, and are then prepared to descend like the vulture upon the prey they have so long been hungering for. These men with no money, no connections, no rank, no sense of responsibility, no loyalty to the profession, no knowledge of its deeds and its traditions, no glimmering of its dignity and importance, with no sense or feeling of their place in the community, with no desire except the ravenous appetite of the starving tiger—these are the warp and woof of the legal “profession” in New York city.

Education is potent, but not omnipotent. Macauley said that a gentleman's education begins with his grandfather. We cannot all have distinguished heredity; but society may so order matters that the best education will be furnished. We must elevate business, because unless business is clean there will always be temptations too strong for even well disposed individuals, and business will work its insinuating and contaminating way into law. We must raise the standards of the legal profession. The twenty-eight or forty-eight or sixty Regents' points will have to go the way of all pernicious things. The law course should be a thorough theoretical and practical course—really practical—not the farce it is in New York, where attorneys, as a rule, perjure themselves in making affidavit as to the services in their office of candidates for admission; or if they do not, they certify to what, though they do not know it, is no more practice than serving summonses and complaints in law practice. The profession itself should do some housecleaning, and engage in educational and moral propaganda. The government should see to the distribution of immigrants. If not, and the problem grows too large to handle otherwise, I shall not be surprised to see recourse to restriction of immigration.

If anyone believes this to be screeching, and not “sane, sober, scientific” discussion, I should advise him to count twenty before he condemns. He may turn out to be a closet economist, or philosopher. When the story of the “Innocents” appears, as it will, the reader will find some amusing illustrations of the unconscious ineptitude of

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"scientific" individuals who stand on the mountain heights aloof, far from the practical affairs of men, and judge human thought, and human passions with the coldbloodedness of a salamander.

ROBERT FERRARI.

### MILITARISM AND PRISONS.

During the month of July, this summer, while visiting prisons and workhouses in England, France and Germany, I was struck with the large proportion of ex-soldiers (chiefly line and non-commissioned officers) in their staffs. Two things, one a theory, the other a concrete governmental problem, may be held accountable. The theory is that routine and stiff discipline are the bases of sound prison policy; and that only military men have any real comprehension of the meaning of discipline. The governor of the Borstal Institution, for example, told me that practically all his subordinates were ex-soldiers, and frankly expressed his opinion that civilians were no good in penal institutions because they lacked an understanding of what steady, rigorous discipline, obedience, or subordination signify, and hence usually prove themselves quite unable to maintain that order which marks so strongly English penal institutions. I found the same faith in the soldier and his discipline in France and Germany. The governmental problem is the duty, rightfully or wrongfully assumed, of finding suitable employment for ex-soldiers who have enlisted under the voluntary system of recruitment. The Prison Commission at the home office frankly confesses that it is constantly between two fires: on the one side are the reformers who clamor for less military routine or mere mechanical "discipline," and for more flexibility in the prison administration, with discipline through constructive educational means. On the other, are the ex-soldiers who must be provided with suitable jobs.

In the present crisis the most interesting feature of the prison problem is the disorganization of the penal machinery through calling to the colors "territorials" and other classes of military reserves. By the middle of August, English prisons had lost at least three hundred officers, with the prospect of still further losses. No doubt continental prisons suffered equally, if not more severely. The moral is that whether they want to or not, the prisons must hereafter recruit their staffs more freely from civilian sources. It will be an excellent step in advance if this emergency opens the way to regular training courses for the prison service. The University of London through some of its departments would seem admirably fitted to jump into the breach to this purpose.

We should not be in the least surprised if the European war has

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the further effect of stimulating the enlistment of young men from reformatory institutions at an earlier age than is now the custom. This is not a specially inviting method of developing a parole system, but it may have some effect, nevertheless. There seems to be no good reason for crediting the cry that this or that nation is turning its criminals loose upon the other. The military regime is common to most of them, and one may be sure that if a prisoner on the way to early release looks like good *kanonenfutter* he will be strongly urged in the direction of the army.

A. J. TODD.

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## MOVING PICTURES VS. THE SALOON.

A close connection between alcohol and crime is pretty generally recognized. Anything, therefore, that tends to reduce drunkenness is of interest to the criminologist. The moving picture has been charged with strong criminal suggestiveness. But it appears to have also its preventive and prophylactic side. Secretary Cocks of the National Board of Censorship, which passes on practically all the moving picture films that circulate through the United States, says that it has been shown that as the number of "movies" increases in a community, the saloons decrease. This is of course only a tentative conclusion, like so many other correlations in the field of the social sciences. Yet it is borne out by statements made to me in England this summer by public officials and social workers. They insist that bad as the public house still is, drunkenness has fallen off greatly in the last ten years; and they credit the "movie" with a considerable part of this decrease. This would seem to justify the position of those who hold the idea that the saloon is the poor man's club, and that the saloon can only be put permanently out of business by positive "substitutes," and not by negative legislation. We believe that social centers and decent workingmen's hotels provided with such simple recreational devices as the moving picture would go a long way toward solving the problem of providing a social gathering-ground other than the saloon for badly housed families, self-respecting unmarried workingmen, and the so-called "homeless men." They would kill two birds with one stone, by eliminating a causal factor of crime, and by providing a preventive through rational recreation.

A. J. TODD.

## PROGRAM OF THE SIXTH ANNUAL MEETING OF THE INSTITUTE.

The following program of the Institute of Criminal Law and Criminology, and of the Section on Military Law, was presented at the New Willard Hotel, Washington, D. C., in the course of the week of October 19.

AMERICAN SOCIETY OF MILITARY LAW.

Monday, October 19, 1914, at 2 P. M.

Topic for discussion:

Proclamations of Martial Law and their Effect.

Paper on Military Orders as a Substitute for Laws, Courts and Constitutions—Henry W. Ballantine, of Wisconsin.

Discussion by members.

6:30—Dinner and reception at the Army and Navy Club.

AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY.

*First Session*—Friday, October 23rd, 1914, 9 A. M.

The President's Address—Quincy A. Myers, Justice of the Supreme Court of Indiana.

Report of Committee on Co-operation with Other Organizations—W. O. Hart, of Louisiana, Chairman.

Committee Reports:

Committee A on The Employment and Compensation of Prisoners—Edwin M. Abbott, of Pennsylvania, Chairman.

Committee H on Sterilization of Criminals—Joel D. Hunter, of Illinois, Chairman.

Committee D on The Classification and Definition of Crimes—Ernst Freund, of Illinois, Chairman.

Luncheon.

*Second Session*—Friday, October 23rd, 1914, at 2 P. M.

Report of the Transactions of the American Society of Military Law—Colonel Nathan William MacChesney, of Illinois, President.

Paper on "Insanity and Divorce. A medico-legal study."—Dr. Alfred Gordon, of Pennsylvania.

Committee Reports:

Committee B on Insanity and Criminal Responsibility—Edwin R. Keedy, of Illinois, Chairman.

## PROGRAM OF SIXTH ANNUAL MEETING

Committee C on Judicial Probation and Suspended Sentence—Wilfred Bolster, of Massachusetts, Chairman.

Committee E on a Proposed Draft of a Code of Criminal Procedure—Wm. E. Mikell, of Pennsylvania.

Committee F on Indeterminate Sentence, Release on Parole and Pardon—Edwin M. Abbott, of Pennsylvania, Chairman.

Committee G on Crime and Immigration—Miss Grace Abbott, of Illinois, Chairman.

Committee No. 3 on Criminal Statistics—John Koren, of Massachusetts, Chairman.

Committee No. 4 on State Societies and New Memberships—Herbert Harley, of Illinois, Chairman.

Committee No. 6 on Promotion of Institute Measures—James W. Garner, of Illinois, Chairman.

### Miscellaneous Reports:

Reports of the Secretary, Treasurer, Managing Editor of the Journal, Managing Director of the Journal.

Election of Officers.

6:30—Informal dinner, New Willard Hotel.

ROBERT H. GAULT.

## A REVIEW OF THE WORK OF THE ENGLISH COURT OF CRIMINAL APPEAL FROM JUNE 1, 1913, TO JUNE 15, 1914.

WILLIAM N. GEMMILL.<sup>1</sup>

England had no court of review for criminal cases for a long period. Gradually a sentiment arose in favor of such a court. Many stories were told, some which had foundation, and others which had not, of innocent persons wrongfully convicted in the English courts. In one instance a man was tried for murder and hanged. The real murderer afterwards appeared and confessed his guilt.

In August, 1907, so insistent had become the demand for a court, which could correct the errors of the trial court, in criminal cases, that an act was passed by Parliament, known as the Criminal Appeal Act, providing for a court of criminal appeals. By this act it was provided that the judges composing the court should be the Lord Chief Justice of England and eight judges of the King's Bench Division of the High Court. The eight judges are appointed by the Lord Chief Justice with the consent of the Lord Chancellor. Any three of these judges so appointed acting together constitute the Court of Appeal. It was expressly provided by the act that the court shall sit in London, but appeals may be taken to it from any criminal court of record in England. The act provides that the court shall be a superior court of record, and shall have power to determine any question necessary to be determined in a case, in order to do justice.

An appeal to this court may be had, first, by application to the trial judge, who may or may not grant it. If the trial judge denies the appeal, then application may be made directly to the Court of Appeal. If upon hearing the appeal, the court is of the opinion that the judgment below should be affirmed, the appeal is dismissed. If, however, the court is of the opinion that the judgment is erroneous and cannot stand, the court directs that the conviction be quashed and the defendant released. If the court is of the opinion that the defendant is guilty of the charge, but that the sentence is too severe or not severe enough, it may either decrease or increase the penalty imposed by the trial court.

During the last year, from June 1, 1913, to June 15, 1914, the court heard and disposed of 125 cases. Of this number the judgments of the trial court were in all respects affirmed and the appeals dismissed in 25 cases. The sentence imposed by the trial court was reduced in

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<sup>1</sup>Justice of the Municipal Court, Chicago.

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54 cases, and the convictions quashed and the defendants discharged in 36 cases. In other words, the judgments of the trial court were vacated in 72 per cent of the cases heard; in 43 per cent of these cases the sentence was reduced; in 29 per cent the conviction was quashed; and in only 28 per cent were the decisions of the trial court fully sustained.

The most frequent reason given by the court in the cases where the conviction was quashed, was that the trial judge had either incorrectly stated the facts in his summing up or had omitted to state to the jury some vital part of the evidence favorable to the accused. In several cases the court held that the evidence offered against the accused was not sufficient to sustain a conviction, and in one or two cases the court was of the opinion that the accused was innocent of the offense charged. In almost one-half of the cases considered, the court was of the opinion that the trial judge in imposing sentence was too severe and directed that such sentence be reduced. In many cases the sentence was reduced more than one-half.

Some of these cases may be of interest to our American readers.

James Whaley was convicted on January 7th of stealing a duck and sentenced to 12 months' imprisonment at hard labor. He had previously been several times convicted of minor offenses, but the Court of Appeal thought his sentence was entirely too severe and ordered it reduced to six months' imprisonment without hard labor.

Anna Jackson, Nellie Reynolds and Mary Priestly were convicted on January 14th of stealing \$25.00 from a man in a disorderly house. Two of the girls were given three years' penal servitude. Mary Priestly was given four months at hard labor. The Court of Appeals, after reviewing all the evidence, held that there was a lack of evidence sufficient to convict in the cases of Nellie Reynolds and Mary Priestly, and quashed the convictions in both cases and directed the sentence of Anna Jackson to be reduced to 12 months' imprisonment without hard labor.

Two very interesting cases decided during the year were those of John Mann who was convicted on January 14, 1914, of attempted suicide, and was sentenced to six months' imprisonment at hard labor, and Alfred Wilson, who was convicted April 10, 1914, of attempted suicide and sentenced to eight months' imprisonment at hard labor. Mann, after conviction, appealed, on the ground that attempting suicide under the common law was not a felony, but a misdemeanor, and as such, no sentence could be imposed which carried with it hard labor, and on the further ground that attempted suicide was not equivalent to attempted murder. The Court of Appeal held that attempted suicide at common law was a felony, and amounted to attempted murder, but directed, that, in view of the fact that the prisoner had twice before served terms in



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prison for attempted suicide that part of the judgment imposing hard labor should be stricken out. In the case of Wilson the court held that in view of the fact that he had served a term of four months' imprisonment at hard labor for a previous attempt at suicide, and in view of the further fact that Wilson was in destitute circumstances and almost starved, his sentence should be reduced to ten weeks' imprisonment at hard labor.

In the case of Arthur Jakeman, who was convicted on January 9th of obtaining a check for \$35.00 under false pretenses and sentenced to five months at hard labor, the Court of Appeal found that the transaction as shown by the evidence was legitimate and the defendant was not guilty, and quashed the conviction.

Peter Malloy was convicted on January 9th of attempted larceny and sentenced to three years' imprisonment at hard labor. The Court of Appeal readily found that the offense charged was not a felony but only a misdemeanor, and that no sentence in excess of 12 months could be imposed. It thereupon reduced the sentence to 12 months.

Ernest Ludford pleaded guilty on February 9, 1914, at the Hereford Assizes, of having stolen some postal orders. He was at that time but 13 years of age. The court thereupon sentenced him to two months' imprisonment and 12 strokes with a birch rod. The case was taken to the Court of Appeal on an inquiry made by the sheriff of the prison who insisted that he could not whip the boy. The claim was made on behalf of the boy that the Children's Act more recently passed in England provided that no children at this age could be imprisoned or detained for a period of more than one month, and that this act also repealed the act which provided for the whipping of children. The Court of Appeal held that it was the duty of the sheriff or superintendent of all prisons and places of detention to carry out all orders of the court, and if the court ordered a prisoner to be whipped it was the duty of such sheriff or superintendent to whip him or to get someone else to do it for him. The court also held that the sentence of two months' imprisonment was erroneous and that only one month's imprisonment could be imposed, but held that the boy could be whipped and that the order of the trial court directing him to be whipped was proper, and that it was the duty of the superintendent of prisoners to carry out that order.

Sidney Freedman was accused of receiving stolen property and was convicted on January 21st of having received an automobile and having received from the parties who stole it two shillings to store the same. When Freedman was asked by the police whether or not the automobile was in his possession he answered "No." He was sentenced to 12 months' imprisonment at hard labor and ordered to be expelled from the

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country and returned to Russia, where he was born. At the time of his trial he was 25 years of age, had been born in Russia and had lived in England twenty years, and was married to an English girl. He could not speak a word of Russian. The Court of Appeals held that the order for expulsion was cruel and unjust and directed that it be not carried out.

Joseph Conroy was convicted on a charge of false pretence and sentenced to six months' imprisonment at hard labor. The court held that at common law there could be no sentence of hard labor upon the charge of obtaining goods by false pretences.

Charles Smith was convicted of soliciting men for immoral purposes and sentenced to 15 months' imprisonment at hard labor and 25 strokes of the cat. The sentence was reduced to 15 months at hard labor and 15 strokes with the cat.

John Thompson stole two purses containing \$50.00 and was sentenced to three years at penal servitude and 7 years' preventive detention. The Court of Appeal held that he was not a habitual criminal and there could be no sentence for preventive detention, and reduced his imprisonment to 18 months.

Louis R. Varley was convicted at Leeds, March 20th, of obtaining goods by false pretences and sentenced to 9 months' imprisonment at hard labor. The Appellate Court quashed the conviction on the ground that there was not sufficient evidence of the identification, and also held that when a photograph is produced at the trial by the police, the jury should not be permitted to know who produced it.

Ernest Wilmot was convicted on March 6th and was sentenced to 15 months' imprisonment at hard labor. After the jury had retired to consider its verdict the judge sent the clerk into the room to inquire whether or not they had reached a verdict. A juror thereupon asked the clerk a question concerning the case, which he answered. The Court of Appeal held that for this reason the conviction must be quashed.

Willie Hart was convicted on March 12th of an indecent assault upon a girl. The girl was 14 years of age. The defendant, who was a steward at a club, denied the offense and there was no corroboration of the girl's story. The conviction, however, was quashed, because there was no evidence that the girl did not give her consent; the age of consent in England is 13 years.

Edward Brerton was convicted on April 6th of larceny. He was charged with stealing a bicycle. He had been tried, on the same day, before the same jury, and the same judge, of stealing another bicycle, and was acquitted. The conviction was quashed largely because the judge, in summing up the evidence, gave undue emphasis to some parts of it, and omitted other parts.

WILLIAM N. GEMMILL

William Cawthorne was convicted of having carnal knowledge of a girl under the age of 13 years. He was 15 years old at the time, and was sentenced to 12 months' imprisonment at hard labor. The judge, in certifying to the Court of Appeal, stated that he desired very much to sentence the prisoner to receive 25 strokes with the cat. When the offense was committed the boy was but 15 years of age. At the time of the trial he was 16 years old. The English law provides that if the accused minor does not exceed 16 years of age the trial judge, instead of imposing the sentence which would follow a conviction, may direct that the child be whipped. The Appellate Court, however, held in this case, that at the time of his conviction he was over 16 years of age and could not be whipped, and affirmed the judgment.

Mary Johnson was convicted of writing and uttering a letter in which she threatened to commit murder. She was sentenced to 12 months' imprisonment at hard labor. When the jury returned in open court with its verdict and was asked what was its verdict the foreman replied: "Guilty of writing and uttering, but not guilty of intent to kill." A judgment against the defendant was entered upon this verdict. The Court of Appeal quashed the conviction and stated that it did not believe the jury intended that any such judgment should be rendered.

Albert Newman was convicted of larceny on July 15th and sentenced to six months' imprisonment at hard labor. After the evidence had all been offered the trial judge, addressing the jury, said: "Would you like me to sum up this case, or is the evidence sufficient for you?" He did not sum up the case. The Court of Appeal held that the inquiry by the judge was proper, but reduced the sentence to three months' imprisonment.

Alfred Charnley was convicted of knowingly allowing his daughter 16 years of age to consort with prostitutes and disorderly people, and sentenced to three months' imprisonment at hard labor. The verdict of the jury in the case was as follows: "We find the defendant guilty of negligence." The Court of Appeal held that there could be no conviction under this state of facts, and the defendant was discharged.

Oscar Fidler was convicted on September 19th of being incorrigible and sentenced to six months' imprisonment and 12 strokes with the cat. His offense was failure to support his wife and child, who had been neglected much of the time and supported by public charity, but the Court of Appeal held that the cat was not proper in a case of this kind and quashed that part of the judgment.

From the work of this court not only during the last year, but since its creation, it is plain that judgments of conviction in criminal cases are not always just, and that serious mistakes frequently occur.

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Indeed, in no court of review in the United States can there be found so large a percentage of cases wherein the judgments of the trial courts were set aside as in the English Court of Criminal Appeals. That court has been greatly hampered by the provision of the act under which it operates, which forbids the remanding of a criminal case for a new trial. Whenever a conviction is quashed the defendant must be discharged. The court has frequently expressed the view that the law should be amended so as to enable the court, where a fair trial has not been had, to remand the cause for a further hearing. Notwithstanding this apparent defect in the act, and notwithstanding the large number of judgments vacated by it, this court has very much that commends it to the consideration of law reformers in the United States. The dispatch with which it performs its duties and the informality of its proceedings are well worthy of our imitation.

There are no delays in perfecting appeals, but appellant either with or without counsel may go immediately from the trial court to the Appellate Court and have an immediate hearing, either upon his application for an appeal, or upon the appeal itself. No new record is necessary, but the record of the trial court is removed directly to the Court of Appeal, where it may be examined by that court. If it is urged that a new trial should be granted on the ground of newly discovered evidence, the Court of Appeal is prepared to hear such evidence, and, generally, if a proper showing is made, additional witnesses are called directly before the court and there examined.

The opinions of the court are rendered at once upon the conclusion of the hearing, and announced generally by the chief justice. Such opinions are usually very short and informal, often not exceeding one hundred words in length.

## IN DEFENSE OF THE PUBLIC DEFENDER.

ABRAM E. ADELMAN.<sup>1</sup>

The necessity of creating the office of "Public Defender," now established in Los Angeles and in Houston, Texas, is being urged for the county of New York by Mayer C. Goldman, of the New York bar, in an able paper, partly quoted in *Bench and Bar* for June, 1914, and commented upon in both that number and the issue for July, 1914. The demand for this office is a reasonable one upon both philosophic and practical grounds. It would not be contended that the basis of the prosecution of crime by the state is the satisfaction of the desire for revenge by the community in general, or the friends and kinsmen of the victim in particular, against the criminal. Nor does the state prosecute crime, primarily to punish the violator of its criminal code. The state itself prosecutes crime because private reprisal by the injured party and his friends against the criminal and the latter's counter reprisal would destroy all order, though, in this maintenance of order, the state does, incidentally, satisfy private vengeance. But on this theory, it is just as important for the state to defend the accused as to prosecute him, lest the first reprisal against the accuser or the state itself come from one who thinks he has been, or perhaps has really been unjustly punished on account of the power of the state having been lent to the prosecution alone. There is as much danger of the destruction of public order from the use by the state of its resources to prosecute only, as there would be in its use of its resources only to defend those charged with crime. Thus, public order can, in the long run, rest only upon an even handed system of justice which defends, theoretically and practically, as efficiently as it prosecutes, those charged with crime. Every student of law knows that theoretically, it is as much the duty of the State's Attorney and the court to attempt to confirm the claims of those who are charged with crime that they are innocent, as to confirm the charges of their guilt. Legal history shows that in state trials as far down as two hundred and fifty years ago, the accused was not permitted to have counsel to represent him, and had not the right to compel the attendance of witnesses in his behalf by subpoena, because it was said by the court and prosecutors, "We will protect you better than your own counsel, and will ourselves bring in the witnesses to prove your innocence"—a rather anomalous practice—human nature being what it is—of a good enough theory.

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In counties of sparse population, the state's lawyer may perform the double function of prosecutor and defender properly. There are not sufficient "cases" (every one of which concerns a human being, by the way) to require a huge machine of the law to deal with crime. Hence, each case can be given all the attention it deserves from the viewpoint of both guilt and innocence. Furthermore, in such communities, the population is usually familiar with the person concerned, his reputation and his past conduct, and as much of the nature and details of the offense as it can be given an outsider to know, and so the State's Attorney is to some extent held to an even and impartial discharge of his duty as a punisher of guilt as well as a defender of innocence, by an intimate public opinion, yet is prevented from becoming only a prosecutor through routine or inertia, to vent his personal animus, or to make a record; though a stranger in a small community, unfortunate enough to be charged with a serious crime, does not get the benefit of these forces and often fares worse than in a center of large population. But in such centers, the "cases" are so numerous and concern those who are poor and obscure to such an extent, that it would seem expedient, for the sake of efficiency alone, to commit the duties of prosecutor and defender to separate public officers.

As for the judge, either in a small or large community, he is, under our system of law, only a referee between two contending lawyers in those criminal cases, where even a guilty defendant has able and high priced counsel to "save the record;" while in the case of a friendless and innocent, but perhaps bewildered defendant, caught in the machinery of the law, he may work his will, colored by the point of view of the State's Attorney, who has necessarily taken his point of view from the reports of many cogs in a large machine, whose chief function, at least, is to prosecute guilt and not to unearth innocence.

It is true that large daily newspapers produce to an extent, the same effect of giving the public information of crimes, in great centers of population, that the personal contact of small communities produces. But this information does not cover the great numbers of cases in which the poor and obscure are charged with and tried for crimes and misdemeanors—cases which do not happen in small communities.

The institution of the "Public Defender" is simply the systemizing of the double function of the state in dealing with crime, made necessary by conditions in large centers of population; and like any process in which there is a division of labor, the work in each department comes to be performed with greater efficiency and precision, and with less waste and at smaller cost. The work of each division co-operates into a whole process such as is never produced without a division of labor.

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It is logical to suppose that with the institution of the Public Defender, the prosecutor's office would require but half of the working force, which it now needs. For, on the argument of the defenders of the present system, half of the prosecutor's energy is presumably used to establish the innocence of those charged with crime. Thus it would seem that the plan of the public defender would not only not cost the public more than the present system, but on account of the saving through the division of labor, would tend to cost the state less to deal with crime.

Of course, the change would chiefly affect the needy, the weak, the lowly and all that class which is usually submerged in centers thickly populated, but society owes a duty to these because it is chiefly responsible for their existence. At the present time, it is thought that this duty is discharged when the court appoints a lawyer to defend the person accused of crime who cannot hire his own counsel. There may be exceptions, but it is undeniable that as a rule such work is given to young and inexperienced lawyers, who hurt the cases they defend, as often as they help them. But whatever the result of such practice is, it is unfair either to able practitioners or to inexperienced and incompetent ones alike, to require them to give their services for nothing, as long as the present system of the privately paid trial bar exists in the profession of the law.

Changed economic and social conditions have made businesses of all activities, usually called professions and particularly so of the law. The law business consists in turning as many matters into fees as possible. As long as the lawyer does this in the course of practice in his office, the public is not directly concerned, but when the lawyer comes with the case of his client into a court, maintained at public expense and there at the expense of the people, maneuvers and conducts a battle with the opposing side, for the purpose of winning his client's case, the absurdity and evils of the present system of a privately paid trial bar are apparent. Suppose that the scientists were paid to determine the laws of medicine, or chemistry or mathematics or any other science according to the interests of the men who paid them. How far would the human race have traveled along the path of progress on which science has led it? Nothing but a trial conducted in the spirit of the scientific investigator and not the spirit of the hired fighter is to the interest of the public, which pays the bill in the long run. In no department of the administration of the law are the evils of the present system of a privately paid trial bar more manifest than in the administration of the criminal law. Under the system of the public defender, as well as the public prosecutor, both sides would be operating under a

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system tending to elucidate the truth, whichever side it hurt or benefited and not to win the case. The fact that the defendants who were unable to hire private counsel would be the chief beneficiaries of such a system, while the evils of the present system would still obtain in the cases of those who could hire private counsel, is no argument against this reform, but rather an argument in its favor. It seems to the writer that an innocent man charged with crime, would rather be represented by the public defender with his organization at the service of his case than by private counsel, even if he could afford such counsel. If all defendants in criminal cases cannot be compelled to resort to the public defender for constitutional reasons, so much the worse for these constitutional reasons, rather than for a system which would sweep away some of the obvious evils of the administration of our criminal law.





## VAGRANCY LAW; ITS FAULTS AND THEIR REMEDY.

JOHN LISLE.<sup>1</sup>

*"There is a time when all things shall become new. This maxim is verified in the following historical deduction, wherein are set forth, what laws for the poor were anciently in this kingdom, what the laws are now; and what laws have been made by ingenious and public spirited men from time to time, for the amendment of the same. -*

*"What the author himself hath proposed, he is not so sanguine as to expect that it will have a better success than what others have offered before him. His principal design is to excite attention; and, from a comprehensive view of the subject, to enable every reader to form his own judgment."*

So wrote Richard Burn on January 15th, 1764, in the preface to the best history of the English Poor Laws yet published. And it will serve well to begin this short article on vagrancy. For the past and present history of vagrancy is confused with that of the care of the impotent poor, with little, and that but a quantitative, distinction in the penalties imposed throughout the past five hundred years. This distinction should, of course, be qualitative, as there is similarity but no identity between the two classes. It has been said that the first legislation against vagrants was passed in 1744. This statement, however, is equivocal, for the word vagrant in England has a significance quite different from that usually accepted in America, and is roughly equivalent to tramp, while in this country it connotes all the shiftless able-bodied poor. This difference in terminology must be kept in mind in studying the history of our subject.

In order to grasp fully the present status of the law of vagrancy, a knowledge of its past is necessary, which presupposes not only a knowledge of the statutes, but also of the evils they were made to remedy, so that by applying laws suited for one condition and evil, to different problems, we will not strain them beyond the point of elasticity, with an easier remedy close at hand.

Prior to the accession of Edward II, the existence of serfdom precluded modern vagrancy; a vagrant in those days was in the first place a tramp and necessarily a criminal. It was about the middle of the XIV century that poverty in a modern sense and with it vagrancy developed. From the beginning of the reign of Edward III, throughout

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the following hundred and fifty years, the poor could get alms at the monasteries. Until the Act of 27 Hen. VIII, C. 25, a man who had to beg in the highway while possibly a vagrant in the American sense of the word, could obtain food through ecclesiastical institutions for the support of the deserving poor. From this fact, an error arose which has not been yet fully eradicated: the failure to distinguish the three classes of poor—the impotent, those who will work, and the able-bodied, who will not work.

The error has been given an historical basis by the English Law of Settlement. In the earlier days, the migrant was necessarily a criminal, and was returned to his overlord. Later, labor was scarce, and the laborer was not allowed to leave his parish. Still later, the impotent migrant was returned to his parish because he was potentially a charge wherever he went. In the earlier days, none but the impotent had any opportunity to beg, because of serfdom. And they were encouraged so to do in order to relieve the church of the burden of their support, while later the ecclesiastical orders, in a desire for power, encouraged certain classes to devote their time to other pursuits than breadwinning, always subject, however, to laws of migration and license. Thus, the poor laws were made for poor cripples and against poor migrants, and no provision was made for the able-bodied poor, who refused work at home because the relation of the laboring class to society precluded their existence.

Cripples were allowed to beg within their own parish, to distribute the burden of their support, and were kept there to prevent them from becoming a charge on strangers; the able-bodied poor were not allowed to leave their parishes, because of the scarcity of labor. The class of able-bodied poor, who refused to work, had either to obtain alms from the monasteries, for which some return (possibly not labor in a strict sense) was necessary, or starve, i. e., they worked or died. The English poor laws were formed to meet the ideas which had underlain such a system without regard to one intervening fact: the destruction of the monasteries. From 1535, the poor did as best they could, with a constant increase in the number of tramps. The able-bodied who would not work, escaped starvation by going from the place where their pleas were useless, to impose upon strangers. Cripples begged in the streets as before. 43 Eliz. C. 2, passed in 1643, the codification of all the acts of the preceding century, is today the source of all poor law legislation. To it, and next in importance, is added the Settlement Act (14 Car. II, C. 12), providing for the removal of every poor person, likely to become a charge (limited by 35 Geo. III, C. 101, to those who shall have become actually chargeable). As a result

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of the historical conditions, which we have mentioned, the English law lost sight of the criminality of those who remained in their own parish, able to work but refusing to do so, and living on the county. This is the class with which we are now dealing.

This class is now as numerous and dangerous as the tramps in Edward II's reign. They constitute a host in every large American city, living in disgusting filth, spreading disease by contagion and inheritance, giving examples of sexual immorality and every kind of dishonesty and crime. It must be destroyed by provision for its existing members of incurable dye, and by the reformation of those who are entering as novitiates, and the prevention of new converts.

To do so, the laws must be radically changed. They are based as we have said, on social relations now passed away. They were formed in an age when science did not consider the abnormality of such a class or distinguish between those who became a burden on the parish through subjective imperfection, and those whose state was due to objective social conditions. They were formed in an age when legislation was entirely punitive, not corrective. They are the direct descendants of statutes whose object was to prevent the migration of the able-bodied poor, and to place the burden of the impotent upon the home parish.

It is not a question of *making* a new division of the poor, but of giving it recognition, when political and social conditions have made it. The poor are sociologically of three classes, and in obedience to the dictates of positive legal philosophy, the laws must be threefold in order that the requirements of each class may be met. Tramps, we may add, are criminals of an entirely different type. Their delinquency is not due to their failure to bear their share of the social burden (a failure nearly every criminal shares), but in their dangerous characters, being responsible, as they are, for the burning of barns in which they seek shelter, and of assaults upon housewives left in charge of lonely farm houses. They are a rural type, as the vagrant is pre-eminently an urban class. A tramp may well be a vagrant, but a vagrant is not necessarily a tramp. The latter is a positive, contradistinguished from a negative criminal. We will not include tramps as within the scope of this article. They come within the jurisdiction of the county criminal courts, and should be prosecuted by the district attorney, while the poor of all three classes are a state concern.

*Class A.* The impotent poor "whosoever, man or woman, being so aged or diseased that he or she cannot work, not having whereon to live."

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*Class B.* The able-bodied poor, able and willing to work, but unable to find it.

*Class C.* Vagrants, "who as long as they may live of begging, do refuse to labor, giving themselves to idleness and vice."

To dismiss the first two classes with a word, as they are not the object of this article, but yet too closely related to it to be totally disregarded before taking up even the definition of the third.

The impotent poor should be taken care of in the county of their home. They are objects of charity and of public duty as well. They are not objects of punishment, but of bounty. They should not be removed from their friends, but should be placed in institutions regulated as private charitable "homes." Care should be taken, however, to prevent the entrance into such an institution of any except those who physically qualify. A refusal to remain therein should be an act of vagrancy.

*Class B.* The solution of the problem of dealing with this class is almost insuperable. The only possible hope for a satisfactory plan lies in the betterment of all social conditions, but a state commission acting as an "intelligence office," and supplying transportation, would solve the difficulty to a large extent. The membership in this class might consist in those who apply for work and those attempting and failing to qualify as members of Class A. A refusal to accept the work offered, or a discharge or a definite number of refusals or discharges might put upon the applicant the burden of disproving that such was not an act of vagrancy.

The question of vagrancy is, of course, chiefly concerned with the present law and its amendment in all the particulars, in which new provisions could be made more suited to the conditions and evils of to-day. In order, however, to attempt such constructive work, not only is a knowledge of past and present conditions necessary, so that the reformer may see the trend of development, but an accurate knowledge of the legislation of the past, which shows what was and what was not found expedient for the conditions that have prevailed.

The first mention of vagrants was made in the year 1349, when the "Statute of Laborers" (23 Edw. III), an anadronim, "because many valiant beggars, as long as they may live of begging, do refuse to labour, giving themselves to idleness and vice, and sometimes to theft and other abominations," prohibited the giving of alms, "so that thereby they may be compelled to labor for their necessary living." Forty years later, 12 Rich. II, after prohibiting laborers from wandering, provided "of every person that goeth begging and is able to serve, it shall be done as of him that departeth out of the hundred," and

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that "beggars impotent to serve" shall remain in their parish. One hundred years later in the reign of Henry VII, this act was found too expensive, and for this reason and because of the death of many convicts in jail, "all such vagrants, idle and suspect persons living suspiciously" were, after certain preliminary punishment, to be driven out of town. Eight years later, by 19 Hen. VII, C. 12 (1503), this act was repealed and such persons were to be conveyed to where "they were born, or else to the place where they last dwelled or made their abode by the space of three years." By 22 Hen. VIII, C. 12, "If any person being whole and mighty in body, and able to labor, be taken in begging or be vagrant and can give no reckoning how he lawfully gets his living, the constable may arrest and bring him to a justice," who shall inflict the same ultimate punishment as under the act of 19 Hen. VII; that is, return him to his parish. This act also provides for the impotent poor, who may be licensed to beg. But so far, with the exception of 23 Edw. III, all these acts only carry out the old idea that all the poor must stay in their settlement, the impotent to beg, the able-bodied to work or starve.

In 1535, 27 Hen. VIII, C. 25, providing that all sturdy vagabonds shall be "set and kept to continual labor, so as to get their own living," and "And all idle persons, russelers, calling themselves servingmen, having no masters, shall be ordered to all intents as sturdy vagabonds," enacts that the impotent poor shall be relieved. This is the first distinctive act which provides for even two classes. The prior acts when distinctive, at all, made no provision for the impotent. The distinction was simply for the purpose of allowing the impotent to beg. In the reign of Edward VI, (1 Edw. VI, Cap. 31547), also the distinction is clearly made: "Whosoever, man or woman, being not lame, impotent or so aged or diseased that he or she cannot work, not having whereon to live, shall, like a serving man wanting a master, or like a beggar, or after any such other sort, be lurking in any house or loitering or wandering by the highway side, or in streets, cities, towns or villages, not applying themselves to some honest labour, and so continuing for three days, or running away from their work, every such person shall be taken for a vagabond," and the provision of 27 Hen. VII for the relief of the impotent poor was re-enacted. By 3 and 4 Edw. VI, C. 16 (1549), "Common laborers of husbandry, able in body, using loitering, and refusing to work for reasonable wages, shall be punished as strong and mighty vagabonds." These acts show a third class besides, tramps and the impotent poor. But in the last act in which the third class is accurately described, it is assimilated with that of tramps.

This brings us to the reign of Elizabeth, in which the modern

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Poor Laws of England were begun, and codified in 43 Eliz. C. 2 (1601). The prior acts of this reign, however, deal more directly with our subject. 14 Eliz. C. 5, provided for the imprisonment of "all rogues, vagabonds and sturdy beggars." And for the full expression what persons shall be intended to be rogues, vagabonds, and sturdy beggars, it is enacted that, *inter alios*, "all persons, being whole and mighty in body, and able to work, having not land, or masters, nor using any lawful employment and can give no reckoning how they lawfully get their living \* \* \* and all common laborers, able in body, loitering, and refusing to work for reasonable wages, \* \* \* shall be deemed rogues, vagabonds, and sturdy beggars." By 18 Eliz. C. 3, houses of correction are provided "for setting on work and punishing all such as shall be taken as rogues or once punished as rogues, and by reason of the uncertainty of their birth, or of their dwelling by the space of three years, ought to be abiding and kept within the same county."

The power to erect houses of correction was re-enacted by 39 Eliz. C. 4 (1597), and continued in force until 1713. And this act described vagrants as *inter alios*, "all idle persons going about either begging or using any subtil craft or unlawful games and plays—all jugglers, tinkers, peddlers, and petty chapmen, wandering; all wandering persons and common laborers, using loitering, refusing to work for common wages, not having living otherwise to maintain themselves, and every one fulfilling this description is to be returned "to the parish where he was born, if the same be known by his confession or otherwise; if not to the parish where he last dwelt by the space of one year; there to put himself to labor as a true subject ought to do." He is to be conveyed to the house of correction or common gaol," there to be employed in work until he be placed in some service, and so continue by the space of one year, or not being able in body, until he be placed in some almshouse."

43 Eliz. C. 2 (1601), the source of all modern poor laws, as we have said, gives the justices of the peace power "to commit to the house of correction or common gaol such poor persons as shall not employ themselves to work; being appointed thereunto by the overseers," subject to a right of appeal to next quarter sessions.

The act of 17 Geo. II, C. 5 (1737) (repealing 13 Geo. II, C. 24), enacted that *inter alios*, "all persons who, not having wherewith to maintain themselves, live idly and refuse to work for common wages; and all persons going about from door to door, or placing themselves in streets, highways or passages, to beg or gather alms in the parishes where they dwell, shall be deemed idle and disorderly persons, and

they shall be sent to the house of correction for a month \* \* \* all petty chapmen and peddlers, wandering abroad, and lodging in ale houses, barns, outhouses, or in the open air, not giving a good account of themselves; all \* \* \* persons wandering abroad and begging shall be deemed rogues and vagabonds \* \* \* and all persons apprehended as rogues and vagabonds, and escaping or refusing to go before a justice, or to be examined on oath \* \* \* or giving a false account of themselves, and all rogues and vagabonds, who shall escape from the house of correction," and recidivist rogues or vagabonds, shall be deemed incorrigible rogues. A rogue or vagabond is confinable in the house of correction for six months, an incorrigible rogue for two years. They are, of course, removable under the Settlement Act, and "The place to which vagrants are removed shall set them on work; and if they refuse to work, they shall be sent to the house of correction."

The 31st Section of Gilbert's Act, 22 Geo. III, C. 33 (1782), directs that idle and disorderly persons, able but refusing to work shall be prosecuted under 17 Geo. II. Another action makes the guardian liable for finding employment for those who can and are willing to work.

"The Vagrant Act" (5 Geo. IV, C. 83, 1842) closely follows 17 Geo. III, C. 5, with its three divisions. It describes idle and disorderly persons as *inter alios*, "every person being able wholly or in part to maintain himself of herself, or his or her family, by work or by other means, and wilfully refusing or neglecting so to do \* \* \* every person returning to \* \* \* any parish \* \* \* from whence \* \* \* removed," every unlicensed peddler. "Every person wandering abroad and lodging in any barn \* \* \* not having any visible means of subsistence, and not giving a good account of himself or herself \* \* \* every person wandering, and endeavoring, by the exposure of wounds or deformities, to obtain or gather alms \* \* \* shall be deemed a rogue and vagabond." An incorrigible rogue is qualified as in the earlier act.

Thus much for a brief outline of vagrant legislation in England.

Many suggestions for its improvement have been made from time to time by men high in public esteem. It can be safely said that with the exception of Sir Joshua Chill's plan, none went to the extent of abolishing settlements. It is unnecessary to take them up in detail. They dealt largely with the employment of work houses of all the poor, physically able. Such provisions, together with this union of several parishes in one, is now adopted in England, by the last act cited and 4 and 5 Gul. IV. C. 76 (1825).

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Before taking up the faults of the present law, the inaccuracy of its definition and the remedy suited to modern social protection, it will be well to sketch the legislation in a typical state of the United States. Pennsylvania will serve this purpose. The establishment in New York in 1911 of a so-called State Industrial Farm Colony for inebriates and vagabonds was a step in the right direction, but it cures but one branch of the trouble.

In Pennsylvania the Acts of 1766 and 1767 (the latter applying to rural parts of the state), provide for the incarceration of "idle and disorderly persons." They are a close copy of the English laws, with the same phraseology. It is the attempt of a new people, under new conditions, to apply the law of their habitat. As an example of Colonial legislation, we quote the important section of the act of Feb. 8, 1766 (P. L. 417), in full. It is entitled: "An act for the better employment, relief and support of the poor within the city of Philadelphia, the district of Southwark, the townships of Moyamensing and Passyunk, and the Northern Liberties."

"And whereas great numbers of rogues, vagabonds, and other idle and dissolute persons, frequently come from the neighboring provinces into the said city, district and townships, and there take up their abode, without following any labor, trade or business, or having any visible means of subsistence, and are not only dangerous members of society, but in the end become burdensome to the public. BE IT THEREFORE ENACTED, that it shall and may be lawful for any justice of the peace of the city or county aforesaid to apprehend, and, upon due examination and proof, commit to the said house of employment, all rogues, vagabonds, and other idle, dissolute and disorderly persons found loitering or residing in the said city, district or township aforesaid, who follow no labor, trade, occupation or business, and have no visible means of subsistence, whereby to acquire an honest livelihood, there to be kept at hard labor for any term not exceeding three months; and the said managers are required to receive such persons, and employ them, according to the tenor of such commitments."

This was amended by the act of February 21, 1767, P. L. 430, and the term was reduced to one month.

In both acts, the similarity of the phrases with the English statutes is to be noted, as it is both the cause and result of the error to be avoided of applying, through misinterpretation, old norms to new conditions. This was true at the date of passing this act, for the Law of Settlement was never effectively enforced in America, and is even more marked now, especially in large urban communities. A still greater vice of this kind is shown by the act of 1767, which we will quote also in its important sections.



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Act of Feb. 21, 1767, P. L. 433, "An act to prevent the mischief arising from the increase of vagabonds, and other idle and disorderly persons, within this province."

"Whereas the number of rogues, vagabonds, and other idle and disorderly persons, daily increases in this province, to the great loss and annoyance of the inhabitants thereof. For remedy whereof, BE IT ENACTED, That all persons who shall unlawfully return to such city, township or place from whence they have been legally removed, by order of two justices of the peace, without bringing a certificate from the city, township or place to which they belong; and all persons who, not having wherewith to maintain themselves and their families, live idly and without employment, and refuse to work for the usual and common wages given to other laborers in the like work in the city, township or place where they then are, and all persons going about from door to door, or placing themselves in streets, highways, or other roads, to beg or gather alms in the city, township or place where they dwell, and all other persons wandering abroad and begging; and all persons who shall come from the neighboring colonies, or any of them, into any township or place within this province, and shall be found loitering or residing therein, and shall follow no labor, trade, occupation or business, and have no visible means of subsistence, and can give no reasonable account of themselves, or their business in such township or place, shall be deemed, and are hereby declared to be, idle and disorderly persons, and liable to the penalties hereby imposed; and that it shall and may be lawful for any justice of the peace of the county, where such idle or disorderly persons shall be found, to commit such offenders (being thereof legally convicted before him, on his own view, or by the confession of such offenders, or by the oath or affirmation of one or more credible witness or witnesses) to the work-house of the said county, there to be kept at hard labor, by the keeper of such work-house or gaol, for any time not exceeding one month."

And in a later part, the provision:

"That any person or persons who shall conceive him, her or themselves aggrieved by any act, judgment or determination of any justice or justices of the peace out of session, in and concerning the execution of this act may appeal to the next General Sessions of the city or county, giving reasonable notice thereof, whose order thereupon shall be final."

Showing, as it does, the imitation of English procedure, tends to increase the delusion that the same questions were to be found in the new country as in the old.

In 1836, the equivalent of the act of 43 Eliz. was passed, providing for the removal of the poor "likely to become chargeable" to "where

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he was last legally settled," and describing the persons liable to the penalties imposed by law upon vagrants, as

"All persons who shall unlawfully return into any district, whence they have been legally removed, without bringing a certificate from the city or district to which they belong; all persons who, not having wherewith to maintain themselves and their families, live idly and without employment, and refuse to work for the usual and common wages given to other laborers in the like work, in the place where they then are; all persons who shall refuse to perform the work which shall be allotted to them by the overseers of the poor as aforesaid; all persons going about from door to door, or placing themselves in streets, highways, or other roads, to beg or gather alms, and all other persons wandering abroad and begging; all persons who shall come from any place without this commonwealth to any place within it, and shall be found loitering or residing therein, and shall follow no labor, trade, occupation or business, and have no visible means of subsistence, and can give no reasonable account of themselves, or their business in such place."

There was no provision for commitment in this act, hence the penalties under the acts of 1766 as amended and 1767, were applied. In 1866, provisions were made for the commitment of vagrants in Allegheny to the work-house for from thirty days to six months (Feb. 1, 1866, P. L. 8), while in the same years, provisions were made for the vagrants, in Franklin, Erie, Crawford, Venango and Warren counties (P. L. 259, 720). On June 2nd, 1871 (P. L. 1301), a house of correction was established for Philadelphia, to which vagrants were to be sent.

Five years later, the act of May 8th, 1876 (P. L. 154), as amended by that of May 3rd, 1878 (P. L. 40), the last codification of the vagrancy law was passed. It first, almost repeating the words of the act of 1836, describes vagrants as

"I. All persons who shall unlawfully return to any district whence they have been legally removed without bringing a certificate from the proper authorities of the city or district to which they belong, stating that they have a settlement therein. II. All persons who shall refuse to perform the work which shall be allotted to them by the overseers of the poor, as provided by the Act of June thirteenth, one thousand eight hundred and thirty-six, entitled, An Act relating to the support and employment of the poor. III. All persons going about from door to door or placing themselves in streets, highways or other roads, to beg or gather alms, and all other persons wandering abroad and begging who have no fixed place of residence in the township, ward or borough in which the vagrant is arrested. IV. All persons who shall come from any place without this commonwealth to any place within it and

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shall be found loitering or residing therein, and shall follow no labor, trade, occupation or business, and have no visible means of subsistence, and can give no reasonable account of themselves or their business in such place." And then provides, *inter alia*: \* \* \* If any person shall be found offending in any township or place against this Act, it shall and may be lawful for any constable or police officer of such township or place, and he is hereby enjoined and required, on notice thereof given him by any of the inhabitants thereof, or without such notice on his own view, to apprehend and convey or cause to be conveyed such person to a justice of the peace or other committing magistrate of the county, who shall examine such person and shall commit him, being thereof legally convicted before him, on his own view or by the confession of such offenders, or by the oath or affirmation of one or more creditable witnesses, to labor upon any county farm or upon the roads and highways of any city, township or borough, or in any house of correction, poor-house, work-house or common jail, for a term of not less than thirty days, and not exceeding six months, and shall forthwith commit him to the custody of the steward, keeper or superintendent of such county farm, house of correction, poor-house, work-house, or common jail, or to the supervisors or street commissioners, and overseers of the poor of the respective county, city, borough or township, wherein such person shall be found, as in his judgment shall be deemed most expedient; the said justice of the peace or committing magistrate in every case of conviction, shall make up and sign a record of conviction annexing thereto the names and records of the different witnesses examined before him, and shall, by warrant, under hand, commit such person as aforesaid; PROVIDED, any person or persons who shall conceive him, her or themselves aggrieved by any act, judgment or determination of any justice of the peace or alderman in and concerning the execution of this act, may appeal to the present or next general quarter sessions of the city or county, giving reasonable notice thereof, whose orders thereupon shall be final. That it shall be the duty of the custodian or custodians of any such vagrant, to take active efforts to provide work for every vagrant committed under this act, and not disqualified by sickness, old age or casualty; and whenever labor cannot be provided in the place to which any vagrant is committed, it shall be lawful for such custodian or custodians, and it is hereby declared to be his or their duty, with the approval of the board of directors, overseers, guardians or commissioners of the poor, as the case may be, to contract with the proper authorities of any such township, borough, city, county or other person, to do any work or labor outside the place of commitment; in all cases the work of labor shall be suited to the proper discipline, health and capacity of such vagrant, and he shall be fed and clothed in a manner suited to the nature of the work engaged in and the condition of the season; and when any

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vagrant is committed under the provisions of this act to the custody of the supervisors or street commissioners and overseers of the poor of any township, borough, city or county, it shall be their duty to provide for him comfortable lodging or quarters, either in a station house or other building; the violation or neglect of any of the provisions of this section shall be deemed to be a misdemeanor, and the person so offending, on conviction thereof, in the proper court, shall be sentenced to undergo an imprisonment for a term not exceeding three months, and to pay a fine not exceeding one hundred dollars, either or both, in the discretion of the court."

This covers the present law of Pennsylvania, with the exception of an act providing that anyone, applying to wayfarers' lodge and refusing to work, is a vagrant (13 June, 1883, P. L. 100), and an act (26 Jan., 1895, P. L. 377) allowing counties to erect workhouses, of which, because of the expense, but one county has taken advantage.

The "Tramp Act" (29 Apr., 1879, P. L. 33), as we have said, provides that "any person going about from place to place begging, asking or subsisting upon charity, and for the purpose of acquiring money or a living, and who shall have no fixed place of residence or lawful occupation in the county or city in which he shall be arrested, shall be taken and deemed to be a tramp."

The last act (May, 1909, P. L. 308) as strange as the anachronism or the "Statutes of Laborers" provides that a settlement may be gained.

"(1.) By any person who shall come to inhabit in a county, and who shall, for himself and on his own account, execute any public office legally placed therein during one whole year. (2.) By any person who shall be charged with and pay the proportion of any public taxes or levies for one year. (3.) By any person who shall bona fide take a lease of any real estate of the yearly value of ten dollars, and shall dwell upon the same for one whole year, and pay the said rent. (4.) By any person who shall become seized of any freehold estate within such district, and who shall dwell upon the same for one whole year. (5.) By any unmarried person, not having a child, who shall be lawfully bound or hired as a servant within such district, and shall continue in such service during one whole year."

This completes the history of the vagrancy acts in Pennsylvania, with the exception of the provision governing peddling, which may be briefly stated as forbidden, except for cripples.

From this survey, it can be seen that vagrants are persons who go about from door to door, or place themselves in streets, highways or other roads, to beg or gather alms, or who wander abroad and beg, without any fixed place of residence in the township, ward or borough in which arrested; or who come from any place out of Pennsylvania and are found loitering or residing therein and follow no labor, trade,

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occupation or business, who have no visible means of subsistence and can give no reasonable account of themselves or their business in such places. These compose the largest classes of vagrants. Anybody who receives food and shelter from a charitable wayfarers' lodge in Philadelphia, and refuses to do the work required of him may be committed as a vagrant. In addition to these classes, although not of practical importance today, at least in large urban counties, where the question of settlement is more often than not disregarded, are those who unlawfully return to any district after having been legally removed, without a certificate from the proper authorities of the city or district to which he or she belongs, showing a settlement therein, and those who refuse to perform the work allotted to them according to their ability, by the overseers of the poor.

In order to sustain a conviction, some act of vagrancy must be proven which brings the accused within one of the above classes. The concealment of an act of beggary by the pretense of selling some article, such as shoestrings, or of playing some hand organ or musical instrument is of no avail as a defense.

Anyone coming within the description of a vagrant may be arrested by a constable or policeman on complaint, or on the officer's own initiative, and taken before a justice of the peace, or magistrate, who can convict and commit him to labor upon any county farm or upon the roads, or in any house of correction, poorhouse, workhouse or common jail for a definite term of not less than thirty days, or more than six months (except those who receive shelter, and refuse work, under the act of 1883, who are committed for not more than thirty days). Labor is the essence of the sentence. Where, therefore, a workhouse has been established under the act of 1895, the commitment must be made to it, and in counties which have a house of correction but no workhouse, the vagrant must be sent there. No vagrant can be committed to an almshouse.

The situation is one in which the laws of a medieval island country are being strained to meet the conditions of a modern world, where transportation, employment, society and the means and theories of social protection have changed beyond recognition. The unit is no longer the parish (a division which never existed in Anglo-Saxon America), or even the county, but the state. Delinquency, even when passive, is recognized as a condition to be met and fought, because of its potentiality for harm. Urban life now exists in a form unknown a century ago.

The faults of the system are three. The first consists in the continuance of bad association, the lack of new associates, the fact that

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the county can give no instructive work, but from financial necessity must supply only the poorest kind of labor. The second consists in the failure of the definition to include clearly the apparently impotent poor and the able bodied, who are in fact shiftless, and who will develop into full-fledged vagrants for lack of corrective restraint, for the present definition only includes the worst class. The third fault lies in the shortness of the term and the lack of any provision for recidivity.

The result is the contamination of every large city by the multitude of diseased immoral citizens, living in degradation, preying upon the charitable, breeding crime by example and inheritance, increasing the corrupt vote and tending to retard the advance of civilization physically, morally, mentally and hence socially. We make allusion to the political influence of vagrants to show at the start one of the great difficulties in effecting our remedy, the loss of a large portion of the electorate. The chief fault of the present system, apart from those of definition of its members, is the shortness of the term, and the quality of the work imposed. A short term in the county workhouse where all kinds and conditions are huddled pell-mell, with work of the meanest character has no beneficial effect upon the shiftless. It does not tend to the formation of character by giving the prisoner any trade or employment which will raise him from the bottom of the social scale. Incarceration in a county workhouse means that he is thrown with his old companions, without even a leavening of new associates. The term of the sentence precludes any recovery from a mental and physical state of degradation, even if the course of employment and the associations were different. All this goes without saying; proof is superfluous. These faults must be accepted as existing.

The question of defining the members of this class is beset with difficulties. As we have said, certain acts by impotent poor and by those who allege that they have been unable to find work, ought to connote vagrancy. This requires a definition of these two classes. We suggest the following:

"All persons not having means of subsistence for themselves, and those legally and actually dependent upon them, who because of bodily or mental disease or extreme age are unable to maintain themselves and those similarly conditioned and legally dependent upon them, shall be deemed to belong to the class of the "impotent poor." These should, if of a certain age, have the right to be supported in the almshouses of the county where they were born or have acquired a settlement, but refusal to be placed therein, or leaving thereof, should constitute an act of vagrancy.

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The able-bodied poor, unable to obtain work sufficient to support themselves and those legally and actually dependent upon them should constitute the second class.

"All persons not having means of subsistence for themselves and those similarly conditioned and legally dependent upon them, who are not unable to maintain themselves and those legally and actually dependent upon them, because of bodily or mental deficiency or extreme age, if over a certain age, shall be deemed to belong to the class of the "able-bodied poor," and shall be supplied work, at common wages. Any attempt by any member of this class to obtain relief as impotent, or any refusal to accept or keep the work offered by the commission shall be an act of vagrancy.

All persons (1) who shall commit an act of vagrancy, or (2) who shall receive food and shelter from any charitable society or organization and refuse to do the work required of them, provided, however, that such work shall not exceed one day's work of six hours, for food and lodging for a space of twenty-four hours; (3) who shall attempt to beg or gather alms or who shall beg or gather alms in the streets, highways, roads or public places, or of persons therein, and all persons not having means of subsistence for themselves, and those similarly conditioned and legally and actually dependent upon them; (4) who shall follow no legal labor, trade, occupation or business, with no visible means of existence, without any reasonable account of themselves or their business.

A central farm colony should be established for the detention of such vagrants, and to it every vagrant should be committed. The commitment should not be for a definite term. The necessity of an indeterminate sentence for all anti-social acts of an habitual nature is too well recognized by legal medicine as well as modern criminology to need justification here. It is sufficiently apparent that no criminal or delinquent habit can be said to be curable in a definite period, to show the necessity of a course of corrective treatment, fixed not by legislative act, but by actual "indicia" of reform, to enable us to dispense with proof of a theory generally accepted by modern criminologists. Every vagrant could be paroled or discharged by the Board of Managers at any time after commitment. Present procedure with relation to such classes should be observed so far as consistent with the new act. Vagrants should be local charges. Any constable or police officer, on notice or without notice, on his own view, could arrest a vagrant and take him before a committing magistrate, who should examine him and commit him, if guilty, to the State Industrial Farm Colony, for a term of not less than three months. Any person so convicted should

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be allowed to take his case to the present or next general quarter sessions, either by appeal or by writ of *habeas corpus*, and the orders of such court thereupon should be final, unless an appellate court with original jurisdiction in *habeas corpus* allowed another writ.

The object of such State Industrial Farm Colony should be the detention, discipline, instruction and reformation of vagrants. It should be under the control of a board of managers, appointed by the governor. It should have control, among other things, of the classification, parole, discharge and retaking of inmates, the system of compensation and credits by marks or otherwise, and the scheme of employment, which should be as far as possible of most advantage to the inmates upon discharge.

By these three reforms, in definition, term and place of commitment, the Poor Laws could be made an effective factor in the advance of civilization, and the dictates of medicine, legal philosophy and general sociology could be given an opportunity of showing their practical efficiency. By making the definition include all the shiftless, the increase of vagrancy, which has been the object of complaint in the preambles of nearly every English and American act from the time of Henry VII, will be stopped. Vagrancy is a habit which develops with time, and until it is treated from its inception, and until poverty due to local conditions can be prevented by the state from developing into shiftlessness, there will be no possibility of curing the incipient beggar by physical and moral training and by the teaching of trades. This is a matter for legislative definition, which treatment will not be possible until by legislative act, the burden of such a course is reduced to within the financial power of the counties by means of a single large farm colony. We have emphasized the farm colony because of the well-recognized curative effect of outdoor life, and because of the need of severing old ties in overcoming any habitual delinquency. A longer term than is now possible in most states is an unavoidable consequence of the acceptance of an educational remedy for a habitual delinquent. It follows the other two reforms as of course.

We can but add that the reformation of the Poor Law not only "nearer to our heart's desire," but more in conformity with existing social conditions, is not only an object for the reformer, but a historical necessity which will be effected by juridical evolutive processes. We can but aid necessity, which, subjective and objective in nature, seems either to follow our lead, when we assert ourselves, or to drag us abjectly, when we will not act, to the goal which history has determined.



## STERILIZATION OF CRIMINALS.

(Report of Committee H of the Institute.)<sup>1</sup>

JOEL D. HUNTER, Chairman.

[The disposition and discussion of this report will appear in the next issue.—Ed.]

In this day when one hears the authorities in medical science, in criminology, in ecclesiastical endeavor and in the social sciences changing their emphasis from cure and reform to prevention, it behooves one to know what has been done and what issues are involved in the effort to prevent a further increase in criminality by the sterilization of criminals.

Your committee on the sterilization of criminals in its preliminary report wishes to present:

- I. A summary of the existing sterilization laws.
  - II. A statement of the main issues involved.
- I. Summary of existing sterilization laws:

The first sterilization law was passed in Indiana in the spring of 1907. Since that time similar laws have been passed and approved in eleven other states, in two of which they have been declared unconstitutional.<sup>1 1/2</sup> Bills authorizing sterilization have also been passed in four states, but have been vetoed. In one of these four states<sup>2</sup> a bill was subsequently passed and approved, and was later revoked by referendum. In seven other states bills were introduced, but were defeated in the legislatures. An excellent and complete report on all those bills is given in Bulletin 10B of the <sup>3</sup>Eugenics Record Office, entitled "The Legal, Legislative and Administrative Aspects of Sterilization." This committee wishes to recommend the reading of the report and to thank the committee of the Eugenics Record Office for their courtesy in permitting the use of their information.

Only the twelve laws which have been passed and approved will be considered in this preliminary report. The twelve states which have passed these laws are <sup>4</sup>Indiana, Washington, California, Connecticut,

<sup>1</sup>The personnel of this committee is as follows: Joel D. Hunter, chief probation officer, Chicago, chairman; Judge E. J. Gavan, Criminal court, N. Y. City; Hon. W. W. Roster; Dr. W. A. White, Hospital for Insane, Washington, D. C.; Dr. T. D. Crothers, Hartford, Conn.; Bleecker Van Wagenen, N. Y. City; H. H. Hart, N. Y. City; Prof. J. W. Melody, Catholic Univ., Washington, D. C.; Dr. H. C. Sharpe, West Baden, Ind.; Dr. W. T. Belfield, Chicago; Father P. J. O'Callaghan, Chicago; H. H. Laughlin, Cold Spring Harbor, L. I.

<sup>1 1/2</sup>Iowa and New Jersey. In New Jersey the act was held unconstitutional with reference to epileptics alone and an appeal may be taken from the decision of the Supreme Court to the Court of Errors and Appeals.

<sup>2</sup>Oregon.

<sup>3</sup>Feb., 1914, Cold Spring Harbor, L. I., N. Y.

<sup>4</sup>The dates of approval of the statutes and the citation of places where they may be found are in Table A, Bulletin 10B of the Eugenics Record Office.

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Nevada, Iowa, New Jersey, New York, North Dakota, Michigan, Kansas and Wisconsin.

In summarizing the sterilization laws of these states, the material is divided as follows:

- (A) Persons subject to the law.
  - (B) Officials entrusted with the enforcement of the law.
  - (C) Basis of selection and procedure.
  - (D) Type of operation.
- (A) Persons subject to the law:

Ten of the twelve states provide for the inmates of the state prisons and the state hospitals for the insane, and of certain other state institutions coming under the provisions of the sterilization laws. The other laws, those of Nevada and Washington, provide that the court may order an operation whenever any person shall be adjudged guilty of carnal abuse of a female person under the age of ten years, or of rape, or shall be adjudged to be an habitual criminal. These two laws make no mention of the inmates of state institutions.

Habitual criminals, confirmed criminals, or persons guilty of some particular offense, are mentioned in all the statutes except that of Michigan, which includes only the mentally defective or insane inmates of institutions maintained wholly or in part at the public expense. In one statute, that of Kansas, an habitual criminal is defined as "a person who has been convicted of some felony involving moral turpitude." In most of the statutes the epileptic, the insane, and the idiotic inmates of state institutions are specified as coming under the provisions of the law. The list of Iowa is the longest. It includes the inmates of public institutions for criminals, rapists, idiots, feeble-minded, imbeciles, lunatics, drunkards, drug fiends, epileptics, syphilitics, moral and sexual perverts, and diseased and degenerate persons. In that state sterilization was compulsory for persons twice convicted of felony, or of a sexual offense other than "white slavery," for which offense one conviction made sterilization mandatory. The Iowa law was declared unconstitutional on June 24th, 1914.<sup>a</sup>

- (B) Officials entrusted with the enforcement of the law:

If most of the habitual criminals, epileptics, insane and feeble-minded in the public institutions in twelve states of the Union may be sterilized, it is important to note to whom the authority for the enforcement of these laws has been given. In two states, Washington and Nevada, no official is specified; the court passing sentence may

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<sup>a</sup>On August 31st this decision had not yet been published in the Federal Reporter. A report may be found in the JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, Vol. V, No. 3, p. 419.

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also order an operation to prevent procreation; in neither of these is anything said about the person to perform the operation, nor about any committee to examine into the case previous to the giving of the order. In the ten other states, the inmates to be sterilized are selected by boards or commissions. In only one state out of the ten, Kansas, the board must submit its findings to a court of competent jurisdiction, and receive the order of the court before the operation for sterilization can be performed. In New York and New Jersey, if the orders of the Board of Examiners are disputed, they are subject to review by the Supreme Court or any justice thereof. In Michigan, when the parents or guardian object to the performance of the operation, provision is made for the reference of the question of sanity to the Probate Court. In the six other states, the boards or commissions are given final authority. Each of the ten laws which provides for the creation of a board, states what the membership of the board shall be. In every instance a physician or surgeon is required. Neurologists are mentioned in two, and an alienist in one. On all the boards the chief medical officers or the chief executives of the institutions, the inmates of which are subject to sterilization, are given places. The boards vary in size, and are all appointive.

(C) Basis of selection and procedure:

Inasmuch as such great power is given to these commissions, it is interesting to note what limitations are made concerning the selection of inmates to be sterilized, and what the form of procedure is in making the selections. In Nevada and Washington, the laws provide for the selection of individuals to be sterilized by the courts which pass sentence. In both these states it is optional with the court to enter the order. In neither state is any provision made for any investigation of the mental and physical condition of the individual, nor of his personal history, nor of his heredity. No operations have been performed in either of these states.

In New York and New Jersey, the original order for sterilization is made by a board of examiners, but in either case these orders, if questioned, are subject to the review of the Supreme Court or any justice thereof. In both these states an investigation of the case is compulsory; the New Jersey statute requiring an investigation into the mental and physical condition of the person to be sterilized and the New York statute being so worded that the mental and physical condition, the record, and the heredity must be looked into. In New Jersey, it is optional with the board of examiners to order the operation if a certain defect is found, but in New York it is compulsory to

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order it. No operations have been performed in either state, and the law has been declared unconstitutional in New Jersey.<sup>7</sup>

In Michigan, the original order is given by the management of the institution with expert medical advice if there is no physician at the head of the institution. When there is a dispute concerning insanity, the matter must be referred to the probate court. An investigation covering the mental and physical condition of the inmate, his or her record and heredity, is compulsory, and the operation is compulsory provided it is found that the inmate would have defective offspring or that the operation would be of benefit to the inmate.

In Kansas, the recommendation of a person for sterilization is made by the managing officers of the state institutions to a court of competent jurisdiction, and the final order is made by the court. An investigation of the mental and physical condition of the inmate, and of his history, is compulsory, and the operation must be performed if ordered by the court. No operations have been performed.

In the six other states, Indiana, California, Connecticut, Iowa, North Dakota and Wisconsin, the final authority is given to the board or commission. In four of them an investigation is compulsory, and in two it is optional. In four, the performance of the operation is optional if certain defects are found, and in two, Connecticut and Iowa, it is compulsory. In Connecticut, if it is found that procreation is inadvisable or that the person would improve materially from the operation, then the operation is compulsory. In Iowa, the operation is compulsory if it is found that the inmate would have defective offspring, or would improve materially from the operation. Operations have been performed under the requirements of the law in Indiana, California, and Connecticut.<sup>7½</sup> None have been performed in Iowa, North Dakota, or Wisconsin, and the law has been declared unconstitutional in Iowa.

### (D) Type of operation:

Under this summary of the laws, one other point needs to be considered, namely, the type of operation authorized. In six of the states, no special type of operation is provided for. In them the choice

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<sup>788</sup> Atlantic Reporter, 963.

<sup>7½</sup> Following are the sources of information which show that operations have been performed in three states. The committee hopes to obtain funds to make an intensive study of many of these cases.

Letter on file with committee records from J. M. Hurty, M. D., Sec., Ind. Board of Health.

Letter from Dr. F. W. Hatch, Gen. Supt., Cal. State Hospital, to Eugenics Record Office, on page 83 of Bulletin 10B of the Eugenics Record Office.

Letter from Dr. H. M. Pollock, Supt., Norwich State Hospital, to Eugenics Record Office, quoted on page 85 of Bulletin 10B of the Eugenics Record Office.

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of operation is left to the board or commission. Of these six, the Wisconsin and Indiana laws provide that that operation shall be decided upon which is safest and most efficient, and New York and New Jersey provide for the operation which would be the most effective. Of the other six states, California authorizes asexualization; Nevada any operation except castration; Connecticut vasectomy, oophorectomy in a safe or humane manner; Iowa, vasectomy or salpingectomy; Michigan, vasectomy or salpingectomy in a safe and humane manner, or improvements thereon less dangerous to life; and Kansas, vasectomy or oophorectomy in a safe and humane manner.

### II. A statement on the main issues involved:

It is well at this point to state in brief the main issues which are involved, and which must be considered in relation to laws which authorize and legalize sterilization.

The main issues to be determined are:

(1.) Are the characteristics included in the statutes accepted by authorities as heritable?

(2.) Of the possible surgical operations, is that one chosen which least endangers the life of the individual and involves the least detriment to functions other than procreation?

(3.) Is it a morally permissible act for the state to prevent individuals from producing their kind?

(4.) Is sterilization the most efficient method socially?

(a) Does it accomplish its purpose without making the individual operated upon a greater social menace to the community?

(b) Is sterilization more efficient in removing people with defective germ plasma than segregation or any other method?

(5.) Are state officials as a whole worthy of being entrusted with such powers as must be given under a sterilization law?

(6.) Is the constitutional guarantee of the individual infringed upon?

In its consideration of the above issues the committee seeks here merely to state some of the opinions that have been publicly expressed, and to set forth the things which must be proven before it is advisable or right to advocate the sterilization of criminals.

(1.) Are the characteristics included in the statutes accepted by authorities as heritable?

Under this heading two questions must be answered:

A. Are criminal traits, as such, heritable?

It is necessary to quote only a few sentences to show that there is as yet no agreement concerning the answer to this question. Several of the quotations given below are statements of opinions. These opinions differ partly because those who express them have had different material to work with. For example, Drs. Healy and Spaulding worked with juvenile delinquents, of whom all the girls were under

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eighteen years of age, and the boys under seventeen; while Dr. Charles Goring examined English convicts, many of whom were hardened and confirmed criminals. In several instances the committee has been unable to ascertain the facts upon the basis of which the opinion quoted was rendered. Such opinions are included in this report to show that the committee does not find an agreement in the writings which it has had at its disposal.

Dr. McKim: "Crime cannot be hereditary, but merely the tendency to crime."<sup>8</sup>

Drahms: "The burden with which the congenital offender comes already laden, and from which he draws his inspirational forces, is purely congenital. It is the product of entailed inheritance from ancestral germ plasmas \* \* \* even inoculating that new life with the very germs of theft and murder already stirring in the flood of its progenitors ages back."

Charles V. Carrington: "I am unreservedly of the opinion that sterilization of our habitual criminals is a proper measure."<sup>9</sup>

Drs. Edith R. Spaulding and William Healy: "In the 1,000 cases we have reviewed, we have carefully sought for evidence of direct inheritance of criminalistic traits, as such. However, in no one case of the 1,000 have we been able to discover evidence of anti-social tendencies in succeeding generations without also finding underlying trouble of a physical or mental nature, or such striking environmental faults or mal-adjustments as often develop delinquency in the absence of defective inheritance."<sup>10</sup>

The problem presented by this question is well summarized by Dr. Henry H. Goddard in an article in Bulletin 13, of the *American Academy of Medicine*:

"In the writer's opinion, it is a serious mistake that the question of criminality has been brought into the matter at all. There is no agreement among criminologists that criminality is hereditary. Indeed that theory is losing ground. Criminality is not born; it is made. The easiest material out of which to make criminals is feeble-mindedness. Therefore if we could make our law apply to the feeble-minded and say nothing about the criminal, we would get under that head probably all of the criminals that need to be considered."

(B) If criminal traits are not heritable, nevertheless, are feeble-mindedness, epilepsy, insanity, imbecility, alcoholism, syphilis and other characteristics and diseases, mentioned in the sterilization statutes, heritable, or any of them, so that the amount of criminality in

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<sup>8</sup>Quoted in "Responsibility for Crime" by Philip A. Parsons, *Studies in History, Economics and Public Law*, edited by Faculty of Political Science at Columbia University, Vol. 34.

<sup>9</sup>*Virginia Medical Semi-Monthly*, Vol. 13, p. 389.

<sup>10</sup>*JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY*, Vol. IV, p. 837.

the next generation would be decreased if people possessed of the above qualities or any of them should be sterilized?

In the quotation given at the end of the last paragraph from Dr. Goddard it is stated that "the easiest material out of which to make criminals is feeble-mindedness." Dr. Alfred Gordon, in the *JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY* for March, 1914, states that "The collected facts show that alcoholic individuals procreate degenerate and feeble-minded children."

In a report concerning 2,000 inmates of Elmira Reformatory,<sup>11</sup> Dr. Wade Robertson says, "In antecedents, insanity, epilepsy, defectiveness, nervous disorders, alcoholism, syphilis, tuberculosis and drug habits we found to be frequent and common factors."

Drs. Spaulding and Healy in their above cited article on "Inheritance as a Factor in Criminality," state that "all told, the indirect influence of heredity on criminalism in our cases appears to be that in 35 per cent there is predominantly a transmission of mental or physical defect, and that in 9 per cent such inheritance is partly responsible. This makes a total of 44 per cent in which bad heredity is indirectly responsible for crime."

The Eugenics Record Office, in its Bulletin 10A, include the following classes in the cacogenic varieties of the human race: 1, feeble-minded; 2, the pauper class; 3, the inebriate class; 4, the criminalistic class; 5, the epileptic class; 6, the insane class; 7, the constitutionally weak, or asthetic class; 8, those predisposed to specific diseases or the diathetic class; 9, the physically deformed class; 10, those with defective sense organs, as the blind and the deaf, or the cacaesthenic class.

The bulletin also states that "For a long time students of human society have practically agreed that along with the circumstances of environment, the anti-social individuals of the human race originate to some degree from innate characteristics." Dr. Charles Goring in his recent work on "The English Convict"<sup>12</sup> states: "The influence of parental contagion \* \* \* is on the whole inconsiderable, relatively to the influences of inheritance and of mental defectiveness; which are by far the most significant factors we have been able to discover in the etiology of crime."

Leaving the question as to whether or not sterilization is morally, socially or legally permissible to be considered later, it must be stated here that it is granted by most authorities that the sterilization of individuals possessed of the traits mentioned in the question, and in whose cases the defect would be heritable, would reduce the amount of criminality in the next generation.

<sup>11</sup>*American Journal of Medicine*, Vol. 16, p. 349.

<sup>12</sup>Parliamentary Bluebook, London, 1914.

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Concerning our ability at the present time to ascertain those who should be sterilized, Dr. A. White says:<sup>13</sup>

"A word in this connection with regard to negative eugenics. There has been a tendency of recent years to pass laws providing for the sterilization of certain classes of defectives and delinquents in the community. The casual reading of this chapter up to the present point I think will convince anyone that we are not yet in a position to assume any such responsibility. The amount of knowledge of the ancestors of any individual that would make it scientifically justifiable to sterilize him is an amount that is rarely obtainable, and so far as I know where this work has been done, there has been little or no effort to obtain that knowledge, whether its desirability was or was not appreciated. The only conditions where this method of procedure might theoretically be justifiable with a minimum amount of knowledge would be conditions in which the disorder from which the person suffered was dominant, and therefore, of necessity would be transmitted to the progeny. We must remember, however, that even in dominant traits, union with a healthy person may produce a certain proportion of healthy children, and unless there are going to be at least two children, no prediction is justifiable. If the mating were productive of only a single child, as so many matings are in these days, there is no reason why that child should not be the well child instead of the sick child, and if well it might grow up to useful citizenship. To take the responsibility of interfering at this point and preventing such an issue is a very grave matter, and warrants a much profounder knowledge of the subject than we can claim at present.

"On the other hand, if the trait is recessive, only a very careful examination of the ancestry will make that clear. Then only rarely will it be anything more than a probability. To sterilize such a person is a still graver responsibility, for mating with healthy stock here will eliminate the disease without even any sick progeny as the price. I cannot be too emphatic in my denunciation of the type of legislation here referred to."

In cases in which it is a certainty that all the offspring of an individual will be defective, that individual is certain to possess traits which make him a social menace, even though he were sterilized. In cases in which there is only a probability that a certain number of the offspring will be defective the traits of the individual are such that the individual is often felt not to be a social menace in other ways. It is this latter class that makes the problem so difficult. The students of heredity do not make an exact prognosis in these cases concerning the offspring, and yet they are certain that some will be defective. What is to be done? Should a person be sterilized when the probabilities are that he will have three defective children and one normal one? On the other hand, is it right for the state to allow a man to procreate who

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<sup>13</sup>"Nervous and Mental Diseases," Chap. I, pp. 51 and 52.



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is certain to have a proportion of his offspring defective, or feeble minded, and more than likely criminal?

Concerning the criteria for determining upon sterilization, the Eugenics Record Office says on page 108 of Bulletin 10B:

"As the science of heredity advances it is clear that in certain, even recessive, traits the somatic characteristics of an individual constitute an index, within certain limitations, of such person's germ plasm. \* \* \* When the facts concerning human heredity become more definitely formulated, it may be found wise in the interests of speedy procedure to prescribe by law and rules governing and evaluating the evidence of sufficient proof of potential parenthood of defectives, but at present it would seem wise to omit such, and to require in the interests of double surety the extended investigation called for by the model statute." (The model statute is in the appendix to this report.)

(2) The Surgical Problem:

If the state is to authorize sterilization, it is important to consider for a moment the different types of operations which are possible. The surgical problem will be considered under the following heads:

(a) A statement of the different types of operation for both males and females.

(b) Intrinsic advantages of the different types.

(c) Consequential advantages.

(a) Different Types of Operation:

Dr. William Belfield states<sup>14</sup> that the "sterilization of an individual can obviously be accomplished by either of two methods: 1. The removal of the glands which furnish the procreative elements (testes and ovaries, respectively), (castration and ovariectomy), and, 2, the occlusion of the canal which these elements must traverse (vas deferens and Fallopian tube, respectively), (vasectomy and salpingectomy), before coalescence with the opposite sex element can occur." In addition to the above methods Dr. J. Hall-Edwards of the X-ray department of the General Hospital, Birmingham, Eng., states<sup>15</sup> that "Experimental investigation has taught us that in the X-rays we have an agent which can bring about changes in the sexual organs that complete sterilization results."

(b) Intrinsic Advantages of the Different Types:

Concerning the danger to the life of the individual operated upon, Dr. Belfield<sup>16</sup> says:

"Sterilization of the human male is an exceedingly simple, and entirely safe procedure. Since the minute tube (vas deferens) which

<sup>14</sup>Letter on file with committee records.

<sup>15</sup>*British Medical Journal*, 1912, Vol I, p. 1216.

<sup>16</sup>Letter on file with committee records.

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conducts the spermatozoa from each testis lies for several inches of its length just below the skin of the scrotum, it is very easily secured and occluded. \* \* \* The man is effectively sterilized without pain, danger of infection or impairment of any function whatever, except the passage of spermatozoa through the severed vas. No confinement to bed or home is entailed thereby. The enclosure of the Fallopian tubes within the body makes the sterilization of a woman a more serious and elaborate procedure. Whether the tubes are reached and tied through the vagina or through the abdominal wall, the possibility of peritoneal infection exists. Although the chance of death, with proper technique, can hardly exceed one in two hundred, yet even this constitutes an argument against the procedure in women (salpingectomy) which does not obtain against vasectomy in man."

Father P. J. O'Callaghan writes: "Any operation which destroys the functions of procreation and which has no other immediate purpose than the direct destruction of that function may not have the outward semblance of emasculation, but it has the essential and intrinsic elements of physical violence from which Christianity has recoiled, and against which modern civilization will raise an emphatic voice of protest, when conscious of its significance."

Dr. B. M. Ricketts, in Volume 15, p. 755, of the *Medical Review of Reviews*, states that "Vasectomy sterilizes a man without the slightest impairment of his sexual desire or pleasure."<sup>17</sup>

Concerning sterilization by the X-ray, Dr. J. Hall-Edwards says:<sup>18</sup> "In animals this can be done without producing any ill results, or at any rate, any effects which have so far been noticed." In the case of females, however, Dr. Hall-Edwards writes that there is danger of dermatitis.

The operation to remove either the testes or ovaries is more severe than vasectomy or salpingectomy or sterilization by the X-ray, but it is favored by some because of its consequential advantages. These are considered under the next heading.

### (c) Consequential Advantages of the Different Types:

Castration and ovariectomy are objected to by Dr. Belfield because "they deprive individuals not only of the power to procreate offspring, but also the power to recreate in full measure their own powers." Both these operations cause sexual impotency as well as sterilization.

On the other hand, J. D. Botkin, the warden of the state penitentiary of Kansas, writes to the committee:<sup>19</sup> "We shall have a small per cent of prisoners confined in the prison here that castration will be of great value to them and to society if it were carried out. \* \* \* Vasectomy would not meet the need of these cases."

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<sup>17</sup>Letter on file with committee records.

<sup>18</sup>*British Medical Journal*, 1912, Vol. II, p. 1216.

<sup>19</sup>Letter on file with committee records.

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Concerning castration, Mr. F. C. Cave, the superintendent of the Kansas State Home for Feeble-Minded, writes, Vol. XV, page 123, of the *Journal of Psycho-Asthenics*, that "All desire for sexual intercourse and all erotic fancies seem to have been eliminated"; that boys lost all sexual desires and became "impotent" in every sense of the word. Mr. Cave recommends "Testiectomy for the male, because it limits lewdness and vice."

Concerning vasectomy, Dr. Sharpe writes that "There is no cystic degeneration, no disturbed mental or nervous condition following, but, on the contrary, the patient becomes of a more sunny disposition, brighter in intellect, and advises his fellows to submit to the operation for their own good."

When the committee met in June, the members present were unanimously of the opinion that there had not been as yet any thoroughly scientific and intensive research to determine the consequential advantages and disadvantages to the individuals who had been sterilized under the law or else by agreement and consent.

Under this heading it seems best to place the recommendation of the committee that the institute appropriate \$3000.00 to be used in gaining information along these lines. The committee feels that at present it is not possible to state with authority what the physiological and psychical results of sterilization on the individual are, nor can it state its therapeutic value, nor what proportion of the individuals upon whom the operations of vasectomy or salpingectomy have been performed have become a menace to the community. To make a research along these lines the committee asks for an appropriation of \$3,000.

(3.) Is it a morally permissible act for the state to prevent individuals from producing their kind?

Father P. J. O'Callaghan writes to the committee, "I am convinced that even if it were proved to be theoretically permissible to sterilize certain individuals, it would be morally dangerous for the whole community to exercise its right to do so. In the repression of evil tendencies among men, violent lengths are justifiable only in extreme necessity. I doubt if the necessity is extreme which this method promises to relieve. I believe the moral sense of the community will condemn the sterilization of criminals. \* \* \* The whipping post has been discarded, not because it proved ineffective in curing certain evils, but because it degraded the community that sought to cure these by such a method. The instinct which prompts as direct a method of moral cure as possible often tempts us to forget that the end does not justify unworthy means."

In Bulletin 10A of the Eugenics Record Office it is stated that

"It now behooves society, in consonance with both humanitarianism and race efficiency, to provide more humane means for cutting off

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defectives. Society must look upon germ plasm as belonging to society, and not solely to the individual who carried it. Racial instinct demands that defectives shall not continue their unworthy traits to menace society."

The argument for the defense of sterilization on moral grounds is that the duty of society to protect and preserve itself is higher than its duty to protect and preserve individuals who are a menace to society and who will procreate their own kind. All those consulted by the committee, who oppose sterilization on moral grounds, favor in its stead the remedy of segregation, feeling that the same results can be obtained by that method, which they consider a better one. As there is not a unity of opinion among criminologists as to whether or not criminality is heritable, so neither is there an undivided opinion among theologians as to whether or not it is morally permissible to prevent individuals from procreating their own kind.

(4) Is sterilization the most efficient method socially?

(a) Does it accomplish its purpose without making the individual operated upon a greater social menace to the community?

Dr. B. M. Ricketts, in Vol. XV, p. 755, of the *Medical Review of Reviews*, writes:

"It is of no special consequence to the criminal to make him sterile; \* \* \* he would become a moral libertine, a menace and a most dangerous individual to even the most virtuous, the moment it became known that he is not a dangerous one to cohabit with so far as causing conception is concerned."

Dr. Sharpe reports<sup>20</sup> that a majority of his patients have become of "a more sunny disposition and of brighter intellect," and therefore not a menace to the community. Dr. W. M. Hotchkiss,<sup>21</sup> the superintendent of the State Hospital for the Insane in North Dakota, states that he has "sterilized eleven males with very good results in all cases." These operations were performed at the request of the individuals and their relatives. Dr. Hotchkiss further writes that two of his patients have written him attributing the greater part of their well-being and good state of health to the operation which was performed on them.

The committee submits the above opinions for consideration. There are many similar expressions of opinion which can be found, all of them based on a certain amount of familiarity with a few cases over a limited period of time. The committee feels that a much more thorough research needs to be made before a satisfactory answer can be given to the question stated at the beginning of this section.

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<sup>20</sup>Bulletin of National Christian League for Promotion of Purity.

<sup>21</sup>Letter on file with the committee records.

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(4-b) Is sterilization more efficient in removing people with defective germ plasm than segregation or any other methods?

As stated at the beginning of Chapter III of Bulletin 10A of the Eugenics Record Office, the following methods have been suggested for removing individuals with innately defective strains.

1. Life segregation (or segregation during the reproduction period.)
2. Sterilization.
3. Restrictive marriage laws and customs.
4. Eugenic education of the public and of prospective marriage mates.
5. Systems of matings purporting to remove defective traits.
6. General environmental betterment.
7. Polygamy.
8. Euthanasia.
9. Neo-malthusianism.
10. Laissez-faire.

Whenever any legislative body is considering a bill authorizing sterilization, it should consider it in relation to the other methods that have been suggested. A large majority of the students of the problem feel that sterilization alone can never settle the entire problem of how to rid the country of the individuals with defective strains. Therefore, instead of it being sterilization *or* some other method, it comes to be sterilization *and* several other methods. To quote again from the Bulletin 10A of the Eugenics Record Office:

"To epitomize: Of the several remedies reviewed, segregation and sterilization are the ones deemed by this committee to be most feasible and effective in cutting off from the human population the supply of defectives. Restrictive marriage laws and customs, eugenic education of the public, of prospective marriage consorts, and (in youth) of potential parents, and general environmental betterment, are all eugenic agencies of great value. In this particular problem, however, they rank greatly below segregation and sterilization, although in other social programs they are of prime importance. We condemn neo-malthusianism, because in it we fail to find an agency able to cut off the supply of defectives; but on the other hand, we find it fraught with great danger in that it is more apt to strike at fecundity in our better classes than among degenerates. Systems of matings purporting to remove defective traits, polygamy, euthanasia, and laissez-faire, are condemned unreservedly.

"In the light of studies thus made it is clear that the most promising agency for reducing the supply of defectives in the whole population at a rate making for the ultimate extinction of the anti-social strains, must consist in the segregation of the members of these strains before their reproductive periods, and in the sterilization of such of

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them as are returned to society at large while still potential parents.  
\* \* \* If in such a case objection is made to sterilization, let the particular individual remain under the custody of the state."

The working committee of the Eugenics Record Office (of which Dr. Bleecker Van Wagenen was chairman and Mr. H. H. Laughlin, secretary, both of whom are members of this committee of the Institute of Criminal Law and Criminology) adopted a positive plan to carry out the suggestions made by their committee. That plan included a Model Sterilization Law. That law and the statement of the Eugenics Record Office committee concerning the "Principles proposed for the Model Sterilization Law" are attached in an appendix to this preliminary report, and to them the careful attention of the members of the Institute is requested.

Dr. Henry H. Goddard in pamphlet No. 12 of the Russell Sage Foundation<sup>22</sup> concludes by saying:

"If the individuals that are selected for the operation are never to go out into the world, the operation will be of no very great benefit to society. It will remove a little of the necessary precaution in the institutions. That is of doubtful advantage. But if it is true that many institutions for the feeble-minded have inmates that could go to their homes and be well cared for, their lack of ability to earn a living would be made up by others in the family, and the state would be relieved of the burden. If they are safe from the danger of procreation, this would be a proper procedure. It is also true that our institutions for the insane are so crowded that many cases that are known to be chronic and incurable, and are clearly hereditary, are often allowed to go home during their periods of quietness, and while away from the institution, they become parents of children who inherit their weakness. If the operation was applied to these people, it would save a large percentage of defective inheritance. In the institutions for the feeble-minded, if these people above alluded to could be sent home, others would take their places, could be trained to work, sterilized, and again sent to their homes to be fairly comfortable in those homes. In this way, in the course of time, considerable help could be offered to the solution of this problem, and the burden of caring for so many people for their entire lives in colonies would be, to a certain extent, reduced.

"We thus see that in the present status of the problem, neither one of these plans will solve it at once; but since both are good, and both can contribute somewhat to the solution, the only logical conclusion is that we must use both methods to the fullest extent possible. As we have attempted briefly to show, and as any one can discover for himself if he will give a little time to investigating the conditions, the situation is fast becoming intolerable, and we must seize upon every method that is suggested and offers any probability of helping in the

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<sup>22</sup>Russell Sage Foundation, 130 East 22nd St., New York city, N. Y.

solution of the problem. In other words, it is not a question of segregation or sterilization, but segregation and sterilization."

Dr. H. C. Sharpe feels that sterilization is preferable to segregation. He says, "There is no expense to the state, nor shame to the friends of the individual, as there is bound to be in the carrying out of the segregation idea." Robert R. Rentoul favors sterilization as against segregation, stating that the latter is impractical, because it would be too expensive and so many inmates would escape from custody.

Philip A. Parsons concludes his above-cited paper (in Vol. 34 of the *Studies in History, Economics, and Public Law*, edited by the Faculty of Political Science of Columbia University) on "The Responsibility for Crime" by saying that "Segregation is the only satisfactory and practical solution of the problem."

Conditions vary in different states and therefore each state in considering sterilization laws starts from a different position. Whenever any state legislature has before it a bill authorizing sterilization the committee to which the bill is referred should give careful consideration to all the issues involved, and to the different remedies suggested.

(5) Are state officials as a whole worthy of being entrusted with such powers as must be given under a sterilization law?

That some of the chief executives are not willing to trust their own appointees with such power, unless there are many safeguards imposed, is shown by what the Hon. George E. Chamberlain, Governor of Oregon, under date of February 22nd, 1909, wrote in the message<sup>22</sup> sent with his veto of the sterilization bill which had passed the Oregon State Legislature.

"I am not entirely satisfied that all classes named in the act ought to be submitted to such harsh treatment, and if it is to become a law in this state, greater safeguards should be thrown around the unfortunate wards of the state who are mentioned in the act. Without these there might be a terrible abuse of the power attempted to be given those upon whom the duty is devolved."

Many citizens of this country, which is supposed to have a popular government, have a deep distrust of a majority of public officials, due to the fact that there have been so many examples of misgovernment, especially in the large municipalities. Mr. Albert M. Kales, in his book on "Unpopular Government in the United States," states very clearly how our government has become unpopular, and how there are now many "continued, increasingly aggressive and always popular efforts to rid ourselves of extra legal government of politocrates." If such a condition does exist, is it any wonder that there is a popular distrust of

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<sup>22</sup>Eugenics Record Office, Bulletin 10B, p. 33.

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a majority of public officials and a lack of desire to grant them any great new power?

The government has again and again failed to initiate a movement to meet some evident community need until the particular movement in question has been proven successful under the support and guidance of private people. This is partly due to the fact that citizens do not wish the government to enter into an untrodden field. In Chicago social settlements and private playgrounds existed for several years before any recreation parks and centers were constructed by the park boards. Also industrial and manual training schools were carried on for several years by private effort before there was any instruction along those lines in the public schools of Chicago. Because of these facts the question arises: Would it not be well for private practitioners who favor it to perform operations to bring about effective sterilization upon those who consent, because if these operations prove worth while the movement will gain a greater popular approval?

(6) Is the constitutional guarantee of the individual infringed upon?

Under this heading the committee does not attempt to prove that any particular law does or does not infringe upon the constitutional guarantee of the individual, but it does wish to hold itself to the question, "Can any sterilization law be passed without infringing upon the constitutional guarantee of the individual?"

To sentences involving cruel or unusual punishments, there is a fundamental objection based on the constitutional prohibition found in the Federal Eighth Amendment. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The question to be answered is, "Is sterilization a cruel and unusual punishment?" Frederick A. Fanning says<sup>24</sup>:

"I am inclined to believe that this question must be answered in the affirmative. We must know, or we must be far more certain than we are at present, that sterilization is the only method of eliminating a criminal class in the years to come, and we must have some evidence—which I concede will be very difficult to obtain—tending to show that prospect of sterilization will be a deterrent factor in the mind of one who is inclined to commit rape."

In the case of the *State of Washington, Respondent, v. Peter Feilen, Appellant*,<sup>25</sup> the Supreme Court of Washington affirmed the judgment of the lower court. The decision in part reads as follows:

"Cruel punishments, on contemplation of such constitutional restriction have been repeatedly discussed and defined, although we have

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<sup>24</sup>JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, March, 1914.

<sup>25</sup>No. 70 Wash. 65; 126 Pacific Reporter, 75.



not been cited to, nor have we been able to find, any case in which the operation of vasectomy has been discussed."

"In *State v. Woodward*, 68 W. Va. 66, 69, S. E. 385, a recent and well-considered case which may be consulted with much profit, Brannon, Justice, said:

"The legislature is clothed with power well-nigh unlimited to define crimes and fix their punishments. So its enactments do not deprive of life, liberty or property without due process of law and the judgment of a man's peers, its will is absolute. It can take life, it can take liberty, it can take property for crime. 'The legislatures of the different states have the inherent power to prohibit and punish any act as a crime, provided they do not violate the restrictions of the state and federal constitutions; and the courts cannot look further into the propriety of a penal statute to ascertain whether the legislature had the power to enact it.' 12 Cyc. 136. 'The power of the legislature to impose fines and penalties for a violation of its statutory requirements is coeval with government.' *Mo. P. R. Co. v. Humes*, 115 U. S. 512. The legislature is ordinarily the judge of the expediency of creating new crimes and of prescribing penalties, whether light or severe. *Commonwealth v. Murphy*, 165 Mass. 66; *Southern Express Co. v. Commonwealth*, 92 Va. 66. For such a fundamental proposition I need cite no further authority. \* \* \* What is meant by the provision against cruel and unusual punishment? It is hard to say, definitely. Here is something prohibited, and in order to say what this is, we must revert to the past to ascertain what is the evil to be remedied. Within the pale of due process, the legislature has power to define and fix punishments, great though they may be, limited only by the provision that they shall not be cruel or disproportionate to the character of the offense. Going back to ascertain what was intended by this constitutional provision, the history of the law tells me of the terrible punishment visited by the ancient law upon convict criminals. In our days of advanced Christianity and civilization, this review is most interesting, yet shocking and heartrending."

"The learned jurist then proceeds with the narration of the cruel punishments mentioned in 4 Blackstone, at pages 92, 327, and 377, and after citing and discussing the English Bill of Rights: *Whitten v. State*, 47 Ga. 301; *Aldridge Case*, 2 Va. Cases, 447; *Wilkerson v. Utah*, 99 U. S. 130, 135; *Wyatt's Case*, 6 Rand. 694; *In re Kemmler*, 136 U. S. 436, 446; Cooley, Const. Lim (4th ed.), 408; Wharton, Crim. Law (7th ed.), sec. 3405; *Hobbs v. State*, 133 Ind. 404, 32 N. E. 1019, 18 L. R. A. 774; *State v. Williams*, 77 Mo. 310; *Weems v. United States*, 217 U. S. 349; *O'Neil v. Vermont*, 144 U. S. 323, and other cases, says:

"In short, the text writers and cases say that the clause is aimed at those ancient punishments, those horrible, inhuman, barbarous inflictions."

"*In re O'Shea*, 11 Cal. App. 568, 105 Pac. 777, the California Court of Appeals for the first district said:

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"Cruel and unusual punishments are punishments of a barbarous character, and unknown to the common law. The word, when it first found place in the Bill of Rights, meant not a fine or imprisonment, or both, but such punishment as that inflicted by the whipping post, the pillory, burning at the stake, breaking on the wheel, and the like; quartering the culprit, cutting off his nose, ears or limbs, or strangling him to death. It was such severe, cruel and unusual punishments as disgraced the civilization of former ages, and made one shudder with horror to read of them. Cooley on Constitutional Limitations (7th ed.), p. 471, et seq.; *State v. McCauley*, 15 Cal. 429; *Whitten v. State*, 133 Ind. 404, 32 N. E. 1019; *State v. Williams*, 77 Mo. 310. The legislature is ordinarily the judge of the expediency of creating new crimes and prescribing the punishment, whether light or severe. *Commonwealth v. Murphy*, 166 Mass. 66, 42 N. E. 504, 52 Am. St. Rep. 496, 30 L. R. A. 734; *Southern Express Co. v. Com.*, 92 Va. 59, 22, S. E. 809, 41 L. R. A. 436.

"Guided by the rule that, in the matter of penalties for criminal offenses, the courts will not disturb the discretion of the legislature save in extreme cases, we cannot hold that vasectomy is such a cruel punishment as cannot be inflicted upon appellant for the horrible and brutal crime of which he has been convicted."

On page 163 of Vol. 26 of the *Harvard Law Review*, in an editorial on "The Constitutionality of Compulsory Asexualization of Criminals and Insane Persons," it is stated:

"Police power certainly enables the state to take some measures to protect itself against the birth of undesirable citizens, since limitations to the right to marry have been upheld on this ground. *State v. Gibson*, 36 Ind. 389; *Gould v. Gould*, 78 Conn. 242, 61 Atl. 604. \* \* \* The state can inflict physical injury on individuals for the protection of society. Compulsory vaccination has been upheld, *Jacobsen v. Mass.* 197 U. S. 11, 25 Supt. Ct. 358. There are probably some criminals whose degenerate character can be ascertained, and if a statute can be so drawn as to limit its operation to such as these, it should be constitutional."

On December 9th, 1912, Hon. John J. Light, the attorney general of Connecticut, rendered an opinion concerning the constitutionality of the statute of that state. A part of his opinion follows:

"It has been conclusively proven by the experience of the medical world that the operation of vasectomy and oophorectomy is comparatively painless, and therefore cannot be esteemed cruel, though it may be unusual; but everything new is unusual.

"The constitution does not contemplate that the state should be restricted in the exercise of protective measures to the forms of evil that existed at the time the constitution was adopted.

"In the case of *Weems v. United States*, 217 U. S., page 373, Mr. Justice McKenna, in delivering the opinion of the court, said:

"Legislation, both statutory and constitutional, is enacted, it is true, from an experience of evils, but its general language should not, therefore, be necessarily confined to the form that evil had heretofore

taken. Time works changes, brings into existence new conditions and purposes. Therefore a principle, to be vital, must be capable of wider application than the mischief which gave it birth. This is particularly true of constitutions. They are ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, "designed to approach immortality as near as human institutions can approach it." The future is their care, and provisions for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been, but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality. And this has been recognized. The meaning and vitality of the constitution have developed against narrow and restrictive construction.'

"It may be taken as a determination by the General Assembly that a law of this kind is necessary for the preservation of public health and morals, and no one at all familiar with the facts will question the essential justice of such determination. The classes of persons to which the statute applies are capable of endangering the health, morals and good character of our people and adding greatly to the sum of human suffering. There is no discrimination among the members of such classes. The principles laid down in such cogent language by Chief Justice Baldwin, in the case of *Gould v. Gould*, *supra*, are capable of a wider application than the mischief which gave them birth; they may reach as far as the needs of society.

"There are no individual rights under the constitution superior to the common welfare. The whole of society is greater than any of its parts. No man is permitted to claim the right to beget children with an inherited tendency to crime, insanity, feeble-mindedness, idiocy or imbecility."

On April 12th, 1912, Louis Marshall, an eminent New York lawyer,<sup>26</sup> wrote Hon. Warren W. Foster that

"Except so far as prohibited by the constitutional prohibition against the imposition of cruel and unusual punishment, I believe that it is within the power of the state to inflict a death penalty in such cases as at common law were subject to that punishment, and to impose imprisonment up to the limit of incarceration for life, due regard being had to the nature and character of the crime sought to be punished.

"The prohibition against the infliction of cruel and inhuman punishment is difficult of precise definition. It is generally understood to have reference to the imposition of torture, of a punishment which is barbarous and wanton and repugnant to the public conscience. Electrocution has been held not to constitute cruel and unusual punishment within the inhibition of the constitution, in *People ex rel Kemmler v.*

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<sup>26</sup>Eugenics Record Office, Bulletin 10B, p. 73.

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*Durston*, 119 N. Y., 596, affd. 136, U. S. 436, 446. The decapitation of the hand of a kleptomaniac, the branding of one who has committed the crime of burglary, or the amputation of the sexual organs of one guilty of adultery would doubtless, in this age, be deemed cruel and inhuman punishment. \* \* \*

"I understand that the operation of vasectomy is painless and has no effect upon the person upon whom it is imposed other than to render it impossible for him to have progeny. If it could be said that such a punishment would only be inflicted in the case of confirmed criminals, there would be strong reason, founded on considerations of the public welfare, which would justify its position. The danger, however, is that it might be inflicted upon one who is not an habitual criminal, who might have been the victim of circumstances and who could be reformed. To deprive such an individual of all hope of progeny would approach closely to the line of cruel and unusual punishment. There are many cases where juvenile offenders have been rendered habitual criminals who subsequently became exemplary citizens. It is true that these cases are infrequent, and yet the very fact that they exist would require the exercise of extreme caution in determining such a punishment as constitutional.

"Although not entirely certain as to this phase of the case, I have no doubt that the imposition of such a penalty by a commission or state board, or by any tribunal other than a court which is to determine the penalty for the offense of which one charged with crime has been convicted, would be unconstitutional. The determination that such an operation shall be performed necessarily involves the infliction of a penalty. Unless justified by a conviction for crime, it would be a wanton and unauthorized act and an unwarranted deprivation of the liberty of the citizen. In order to justify it, the person upon whom the operation is to be performed has, therefore, the right to insist upon his right to due process of law. That right is withheld if the vasectomy is directed, not by the court which imposes the penalty for crime, but by a board or commission, which acts upon its own initiative, or which, under a general provision of law, undertakes to determine whether or not the operation shall be performed on a specific individual.

"In this aspect of the case, it seems to me that the decision of the Court of Appeals in *People ex rel Barone v. Fox*, 202 N. Y. 616, which adopted the dissenting opinion of Mr. Justice Clarke, in 144 App. Div. 611, is conclusive. In that case it was held that section 79 of chapter 559 of the laws of 1910, authorizing the physical examination by a physician of a woman convicted of disorderly conduct in that she is a common prostitute, in order to discover whether she is afflicted with any communicable venereal disease, and authorizing the magistrates of inferior courts of criminal justice in the city of New York to commit her to a public hospital for treatment for such disease, for a certain period not exceeding one year, or until she shall be cured, is unconstitutional, since the magistrate is bound by the report of the physician so that the convicted person is deprived of her right to have

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the fact of the existence of the disease officially determined by the magistrate.

"So in regard to the legislation which you now have under consideration, it is my firm opinion that the court which imposes the sentence upon the prisoner can alone impose the penalty of vasectomy, the prisoner being first accorded an opportunity to be heard by the court on the question as to whether or not such penalty shall be inflicted."

Mr. Charles A. Boston in a "Protest against Sterilization Laws," published in the September, 1913, issue of the *JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY*, writes:

"To my mind the forcible sterilization of a human being, because of crime is or may be a violation of the spirit if not of the letter of the principle which prohibited the states to pass any bill of attainder or ex post facto law, and which refused to Congress the power to enact that an attainder of treason should work corruption of blood, or forfeiture beyond the life of the person attainted; it also may have in it the element of unreasonable seizure of a person; it adds to the punishment for an infamous crime, and subjects the individual to a double jeopardy for the same offense, and it may deprive him of liberty without the process of law; it deprives him of the assistance of counsel, and it is or may be a cruel and unusual punishment; it is dangerously allied to involuntary servitude, in that it makes one creature absolutely subservient to the will of another, when the other chooses to exercise the will; it may be the abridgment of a privilege or immunity of a citizen of the United States, and it may be a denial of the equal protection of the laws.

"But I do not base my general argument upon the fact or contention that any such law is beyond peradventure unconstitutional. I recognize that it may escape on the ground that it does not authorize punishment. But I contend that it is nevertheless undesirable, because it weakens the spirit of respect for the clauses of our Bill of Rights, derived from painful experience, whose continued observance is essential to the establishment of justice and the enjoyment of domestic tranquility; for, what a few sincere emotional enthusiasts accomplish today for a fancied public good, may show the way hereafter to a few purely selfish sinister interests, how they also may weaken the constitutional safeguards, to the utter destruction of domestic tranquility or the disestablishment of actual justice."

The Eugenics Record Office concludes its chapter on "Litigation and Legal Opinion," by stating:

"If the purely punitive statute of the state of Washington is declared constitutional, how much more surely ought a carefully designed, purely eugenical statute be formed consistent with the fundamental law of a state—especially if it can be demonstrated that sterilization is an agency capable of cutting off a large portion of our future supply of defective and anti-social individuals, and that it can be supplied

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with due respect for the rights and personal guarantees of the individuals selected for sterilization, and with such discrimination that worthy blood lives will not be cut off."

### APPENDIX.

The committee feels that the Model Law suggested by the Eugenics Record Office is better than any of the statutes which have been passed as yet. The chairman of the committee has received letters from officials in nearly every state in which a sterilization law has been passed, in which faults are found both with the laws and with the methods of administration. For example, Dr. J. T. Bodkin, the warden of the state penitentiary in Lansing, Kansas, writes:

"The new law for sterilization of defectives has not been used in this state. The reason is that the law is too complicated and cumbersome to carry out. It does not devolve upon the surgeon in charge wholly the carrying out of the law, but there have to be so many parties called in before the operation can be performed, and there being no funds to carry it out, the law has become inoperable."

The committee begs the careful consideration of the following Model Sterilization Law submitted by the Eugenics Record Office and of the statement of principles attached thereto:

### MODEL STERILIZATION LAW.

(Drafted by the Eugenics Record Office.)

AN ACT to prevent the procreation of feeble-minded, insane, epileptic, inebriate, criminalistic and other degenerate persons by authorizing and providing by due process of law for the sterilization of persons with inferior hereditary potentialities, maintained wholly or in part by public expense.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ———.

Section 1. There is hereby established for the state of ——— a Eugenics Commission, whose duties are hereinafter defined, and which shall be composed of three persons possessing respectively expert knowledge in biology, pathology, and psychology.

Section 2. Immediately after the passage of this act the governor (or State Board of Control) shall appoint the members of the Eugenics Commission, one of whom he (or said State Board of Control) shall designate as chairman. Any determination or order concurred in by two members of the commission shall be deemed an order of the commission. The members of the commission shall hold office at the pleasure of the governor (or State Board of Control), and vacancies in the commission shall be filled by him (or by the said board) as they occur. Immediately after their appointment the commission shall assemble, shall organize their body and shall proceed to carry out the provisions of this act. The members of the Eugenics Com-

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mission shall be required to devote their entire time and attention to their duties as herein contemplated, and for their services shall be compensated from state funds not otherwise appropriated; and for the performance of their duties as herein contemplated, the aforesaid commission shall be directly responsible to the governor (or state Board of Control.)

Section 3. It shall be the duty of the Eugenics Commission to examine into the innate traits, the mental and physical conditions, the personal records, and the family traits and histories of all prisoners, inmates, and patients of all the state and county institutions for the insane, the feeble-minded, the epileptic, the inebriate, the criminalistic and pauper classes, and of all individuals of such classes in private institutions supported in whole or in part by state funds, excepting always permanent custodial cases, with the view to determining whether in each particular case the individual is a person potential to producing offspring who, because of the inheritance of inferior or anti-social traits, would probably become a social menace, or a ward of the state. If after such investigation the commission is of the opinion that a given inmate is a person potential to producing such offspring, it shall be the duty of the commission to report its findings and to recommend an appropriate type of sterilizing operation to (state court of record of competent jurisdiction) at least thirty (30) days before the day set for the release of such person from the custody of the state.

Section 4. The aforesaid court shall thereupon set a day for hearing the facts of the case, and shall immediately order that either the persons nominated for the operation, his nearest kin, lawful guardian or close friend, be notified forthwith in writing of the time, place and nature of the aforesaid hearing; provided that in cases wherein on account of the mental or physical conditions of the person so nominated, such notification would, in the opinion of the commission, be inadvisable, and wherein, in the same case, the whereabouts of neither the aforesaid mentioned nearest of kin, lawful guardian, nor close friend within the state be known to the commission, it shall be sufficient for said commission to indorse the notification statement with a statement of the reasons why such notification was not served.

Section 5. On the date previously set for the hearing as herein contemplated, the aforesaid court shall, with all speed consistent with thoroughness, examine the findings and recommendations of the commission, and shall hear any objections that may be offered thereto. The commission shall be represented at the hearing by the (proper state or county attorney), and shall defend their recommendation, and in all subsequent litigation incident to the execution of their duties as herein contemplated, the commission shall have the services of the (said proper state or county attorney). The court may at its discretion appoint counsel to represent the person nominated for sterilization, and shall fix the compensation for such services, which compensation shall be paid from the funds from which other similar court expenses are now paid. If after due consideration the court is satisfied that the individual prisoner, inmate, or patient nominated for sterilization is a person as found by the commission, namely, one who is poten-

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tial to reproducing offspring who would probably, because of the inheritance of inferior or anti-social traits, become a social menace, or a ward of the state, it shall be lawful and it shall be the duty of the aforesaid court to authorize and to order the Eugenics Commission to order the responsible head of the institution, in whose charge the particular person nominated for sterilization may be, to cause to be performed on such person, in a safe and humane manner, before his or her discharge or release from the custody of the state, an operation for the prevention of begetting or of conception, as the case may be; and the type of operation may be made a part of the order of the commission in each case; provided that said operation shall not be had within five days after the giving of the order therefor; and the aforementioned responsible head of the institution in whose custody the person subject to a particular order for sterilization may be, shall be directly responsible to the Eugenics Commission for the execution of the operation as ordered.

Section 6. In case of a decision by the court contrary to the recommendations of the Eugenics Commission, said commission may at its discretion order an appeal to (state court of competent jurisdiction), and the execution of any such original order for sterilization as herein provided for may be suspended by any judge of (court of competent jurisdiction) in the county in which the particular prisoner, inmate or patient may be confined, until the hearing and determination of objections to the said order, which hearing shall be had not later than the next special term for motions of the court, and an appeal will lie from the determination of such objections as from an order in a special proceeding. Pending the final determination of such a suspended order or of an appeal by the commission, the subject of the particular order for sterilization shall remain in the custody of the state.

Section 7. After ordering the operation as hereinbefore provided for, any such operation may be performed by any skilled surgeon licensed in the state, who may be designated by the responsible custodian of the person ordered sterilized, and any expenses incurred by the operation shall be borne by the institution in whose custody the person sterilized may be. The aforesaid order shall constitute complete authority for the performance of said operation, and no skilled surgeon, duly licensed in the state, performing the same, shall be questioned in any place or held responsible for the performance of the same.

Section 8. It shall be the duty of the managing head of all the state and private institutions subject to the provisions of this act to co-operate with the Eugenics Commission in the execution of their duties as herein contemplated, and to secure appropriate data concerning innate traits, personal records, and family histories and traits of the prisoners, inmates or patients of their respective institutions subject to the provisions of this act, and to furnish said data to the Eugenics Commission at least 60 days before the date set for the release of each particular inmate.

Section 9. The Eugenics Commission shall have full authority to make further study of the personal and family histories of persons



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subject to the provisions of this law furnished as herein contemplated by the managing heads of institutions; and in the prosecution of such investigations the commission shall have the right to summon persons and to administer oaths, and shall have free access to all court and institution records of this state likely to be of service to such investigations.

Section 10. It shall be the duty of the Eugenics Commission to keep a permanent record of all business transacted by them, including a record of all cases, and histories examined into, and of all reports and recommendations made by them, and of all orders made and received by them, and annually to report a history of all such transactions to the governor (or state Board of Control).

Section 11. All records of investigations, examinations, reports, recommendations, orders, and personal and family histories made, entered, or secured by the commission are hereby declared to be the property of the state, and shall not be opened to public inspection except upon an order made by a judge of a court of record; provided, however, that all such records may be used for scientific study by the commission.

PRINCIPLES PROPOSED FOR MODEL STERILIZATION LAW.

(1.) That both in intent and phrasing the proposed sterilization law should follow the strictest eugenical motives, and should be based upon the theory that sterilization is of such consequences that it should be ordered only by due process of law and only after expert investigation.

(2.) That the inmates of all institutions for the insane, the feeble-minded, the epileptic, the inebriate, and the pauper classes, and of all reformatory and penal institutions be made liable to examination into their personal and family histories with the view to determining whether such individuals are potential to producing offspring who would probably, because of inherited defects or anti-social traits, become social menaces or wards of the state.

(3.) That such determination be made by a eugenics commission composed of persons possessing expert knowledge of biology, pathology and psychology.

(4.) That the responsible head of the institution, in whose custody the particular inmate subject to the provisions of this act may be, be required to furnish the eugenics commission with data on said inmates' mental and physical condition, innate traits, personal record, family traits and history.

(5.) That such examination be made of all members of the aforesaid classes prior to release from their respective custodians.

(6.) That in case it is found for any given individual of the classes herein enumerated that he or she is the potential parent of defectives, the commission shall report its findings and recommendations to a state court of competent jurisdiction, and shall recommend an appropriate type of sterilizing operation.

(7.) That the court shall examine the evidence, allowing ample

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opportunity for the individual in question or his relatives, guardian or friends to be heard; whereupon, if the aforesaid court is satisfied that the individual in question is a person potential to producing offspring who would probably, because of inherited defective or anti-social traits become a social menace or a ward of the state, such court shall order the responsible head of the institution under whose custody the individual in question may be, to cause to be performed upon such person in a safe and humane manner a surgical operation of effective sterilization before his or her release or discharge.

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Mr. Joel D. Hunter, Chicago.

Dear Mr. Hunter:

To your report on the Sterilization of Criminals, inasmuch as it presents the state of the question to be considered, I subscribe. It sets forth the different aspects of the subject adequately. In so far as the report can be construed as proposing legislation looking to the sterilization of the unfit, I must dissent from it. I take this position because I am convinced that the basic warrant for such legislation is altogether lacking. It has not been proven that criminal tendencies are inheritable. As for the feeble-minded, segregation appears to me to be the only practical plan for the protection of society.

Very sincerely yours,

JOHN WEBSTER MELODY,

Professor Moral Theology, Catholic University, Washington, D. C.

## THE OUTLOOK FOR THE SCIENCE OF CRIMINALISTICS.<sup>1</sup>

WILLIAM HEALY.<sup>2</sup>

One of America's greatest thinkers, William James, was wont to say that if a future civilization should look back critically on our weaknesses, the two main ones would be recognized as war and our treatment of offenders. About the first defect, at the present time, we are all persuaded. The handling of criminals is only gradually coming to be discerned for what it really is, prodigious effort honeycombed, as the results show, by inefficiency.

It is not necessary here to go over the figures of monetary cost or more human statistics from courts, prisons, reformatories. Nor need we cite the ever-astonishing facts of recidivism as gathered from statistical sources or from single careers to show the failures in the treatment, under the law, of cases and causes of criminalism. Many of us have repeatedly presented some statement of the ascertainable data. The desirability of emerging from such futilities need not be argued. How is it to be accomplished?

How has progress been made in dealing with other human conditions? How has conquest been made of diseases? Simply by the growth of human knowledge, gained through reasoning and experiment, leading to appreciative understanding of the essentials which underlie the problems involved. There is no other road to success. We might take the thesis of Herbert Spencer's old essay, "What Knowledge is of the Most Worth," and apply it here—it is scientific knowledge; scientific understanding of the basis of conduct.

Now do we really know at all well, in specific cases or in general, the phenomena which genetically underlie the behavior which we call criminalism? Can anyone suppose that the ordinary judicial survey of the offender, or the usual observation of him in institutions brings to light the essentials that really must be met if he is to be changed for the better or checked in any other way. In the process of a legal trial or during enforced detention we find very little addition to knowledge of motives and tendencies—the latter being the dynamic elements which society cares above all things to have altered if they are inimical to general welfare. Motives and tendencies very often have deep-lying roots, and the motivation in anti-social behavior offers no exception. He who thinks that the ordinary superficial attitude towards criminal-

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<sup>1</sup>An address before the American Prison Association, St. Paul, Minn., October 3-8, 1914.

<sup>2</sup>Director Psychopathic Institute, Juvenile Court, Chicago; Associate Editor of this Journal.

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istic springs of conduct comprises the possible extent of our effective knowledge on that point is in the position of the lecturer who on the night that the first message was sent through the Atlantic cable attempted to demonstrate the impossibility of electric currents ever being sent under the ocean. Efficient progress is possible, and, as in other fields, with the application of proper methods will surely come.

To this end the study of criminalistics must receive friendly aid from all dealing with or interested in offenders.<sup>3</sup> The future of this science is worthy of the most earnest consideration. Let all acknowledge that its development is needed—how can this science from present beginnings reach anything like its possible limit of service? The outlook depends, one may be assured, upon how well its work is done. This fact is to be clearly perceived, for in its own attempt to introduce a critical method in a certain field this science must itself display ardent self-criticism.

The science of criminalistics must preserve the best spirit of the other sciences. It must be willing to carefully observe and patiently wait. Almost all the problems of human conduct involve the computation of exceedingly complex factors, which frequently move slowly in the realms of time. The problems of behavior are more stubbornly enduring, and perhaps more difficult to answer than any other. This study must constantly recognize the intricacies of its own material. It should also acknowledge the fact that at present it is in the stages of infantile growth. In modesty should it take note of these points, while forcefully giving evidence of its being alive, with a capacity for enormous growth.

The outlook for it depends upon how practical it becomes, upon how much service it can offer. For this it will have to keep its feet firmly on the ground of fact. The interesting and even able theories of the past must, as theories, be outlived. And this will come about easily and directly through development of good scientific method. As the facts are gradually gathered in, conclusions can be drawn from them alone.

Concerning the supply of data of practical importance, I am convinced that we are only in the earliest stages of gathering these. As yet we have never had even the barest statistics upon which it would be safe to base alterations of present methods. Not that I assert great values, however, in any cut-and-dried statistics and classifications. The essentials to be learned are the much more human facts concerned with

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<sup>3</sup>Criminalistics is the term preferred, in German fashion, to the word criminology, because many phenomena besides those pertaining to the legally defined crime itself and to the criminal, should be studied.

## WILLIAM HEALY

the development of characteristics of the inner life from which conduct springs.

The outlook depends upon how scientifically thorough the science is going to be; upon how well it puts under contribution all of the phenomena which belong in its sphere, seeing from the first the manifold complexities that must be reviewed in order that conclusions may be persuasive, and practical results reached. The possible effects of acquired experiences and acquired tendencies of the mind must be studied, for instance, as well as the innate qualities. Environmental influences, before prison life or during it, as well as congenital and hereditary factors, must be taken cognizance of. Many elements in the field of normal moral life, as well as pathological findings, are to be sized up in their proper relationships. A science which handles such a complex subject must prepare itself for many logical and phenomenal intricacies.

The outlook for the science of criminalistics depends upon how free it is going to keep itself from crankiness—from one-pointed outlooks upon its world. Development is so new along these lines that various criticisms which have been directed, often most advantageously, upon other sciences have not yet appeared. One of the first weaknesses that will be rightly challenged will be any unwarranted drawing of conclusions from insufficient survey of the data. The latter is the essence of crankiness.

The outlook depends upon how well this growing science avoids the contentiousness of the theoretical schools. It is interesting to look back upon the historical growth of many of the sciences and note the quarrels that have frequently taken the place of earnest search for convincing facts. It was so in medicine, it has been thus in psychology. In this domain, with all the light shed from the past, there should be constant charting of the areas of ignorance wherever they exist, and complete reliance only on self-critical survey of definite findings.

The outlook, then, we should insist, depends upon whether those who carry this science forward are willing to proceed by the slow and painstaking methods that have characterized ultimately efficient efforts in other difficult fields. There is a constant temptation, there always has been, for inquiry in criminalistics to get its conclusions prematurely before the public. Some of the data about offenders are already public property and there is a strong demand for further elucidation of the phenomena. We who are thinking of the safe building of our science desire above everything the development of factual foundations that shall so withstand critical inspection that there will be no setback in the confidence which they whom we wish to serve shall have in our undertaking.

## OUTLOOK FOR CRIMINALISTICS

This science and its component parts are in the future often going to be dissected by minds trained in the ability to place ideas which are not adequately founded in the category to which they properly belong. Men of the law tell me there is already a looking askance at the foundations of our recent development in this field. It is to forfend the disaster which complete lack of confidence upon the part of fair-minded, but highly critical men would bring about that we ask for an extra amount of self-criticism while our methods and data are all so young.

It is because criminalistics is a science dealing primarily with dynamics, with the forces that make for criminalism, that it is, and will be still more, in a position to suggest many advantageous alterations in the fields of criminal procedure, penal administration, and progress in preventive phases of criminalistics. As it develops, it is going to be, and already partially is, in a position to apply the test of efficiency to the law. The law has not seen fit to develop any accurate criteria for judging whether or not its methods are effective, but it should heartily welcome any genuine science which can tell the tale of success and failure. Years of careful observation, following upon well-established diagnoses of the forces making from criminalistic conduct, will be necessary. The entrenchments of legal doubt, like the kingdom of Heaven, are not to be taken by storm.

The relation of this science to the reform that is ever called for now-a-days in many aspects of the practical treatment of delinquency ought to be obvious. It furnished the only criteria by which one can sanely judge of the values of many reforms. Of course the application of common-sense points of view to the treatment of prisoners, for instance, such as placing them in more healthful surroundings and occupations, or freeing them from the self-evidently pernicious influences of ordinary jail life, needs no intimate diagnostic study of causes to prove its absolute validity. But there are many proposed and undoubtedly desirable measures, the value of which can only be gauged according as they are estimated in their special relationships to the thousand and one peculiarities of personal equipment or environmental influences which are readily discerned by the scientific method as playing their part in criminalism.

The task of the new science of criminalistics is to bring scientific effort and scientific treatment in play in a field where it has heretofore been woefully lacking. If our science partakes of the spirit of thoroughgoing and utterly sane inquiry and deduction it can go unfalteringly forward.

## INSANITY AND DIVORCE.<sup>1</sup>

ALFRED GORDON.<sup>2</sup>

The problem of insanity and divorce is one of such vast importance from a social standpoint that it deserves full discussion in medical and legal circles. For the solution of this problem the alienist is indispensable. Whether he wishes it or not, the legislator must appeal in such matters to those who daily come in contact with the moral and mental anguish and suffering of unfortunate married men and women.

A legal separation of the two who had contracted marriage may be viewed from a purely sentimental standpoint or from a social point of view. The first is held by those who believe that insanity should be considered on the same ground as any other disease, that both contracting parties owe each other mutual assistance, that one should support the other no matter how painful the consequences of the disease may be, that divorce should therefore not be granted in view of the fact that all the inconveniences resulting from the mental disease cannot possibly have such an offensive character as to deserve dissolution of the marital bond.

The other point of view concerning insanity and divorce is not based on sentiment, but on ideas which have for their object the welfare of society as well as of its component individuals.

Insanity is certainly a disease. A disease that develops after marriage should not be a reason for separation. There are many maladies other than insanity that make conjugal life one of suffering and almost an impossibility. There are other diseases that are repugnant, incurable, but they cannot be considered causes for divorce. A disease must form a part of the conjugal risk. Mental disease alters or abolishes the normal personality, and therein precisely lies the fundamental difference between it and other disorders.

Marriage presupposes common interest especially from a mental standpoint. Affection and devotion are given to each other because each is capable of responding to the other. When the mentality of one of them becomes disturbed, his individuality is lost; it either becomes automatic or a new personality appears; the former personality

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<sup>1</sup>Read at the annual meeting of the Institute of Criminal Law and Criminology, Washington, D. C., Oct. 23, 1914.

<sup>2</sup>Dr. Gordon is a practising alienist and neurologist in Philadelphia, author of numerous articles; among others, "Prophylactic, Administrative and Medico-Legal Aspects of Alcoholism." This JOURNAL, Vol. IV, No. 6.

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that contracted marriage is no more in existence. Consequently mental derangement *per se* is a dissolution of marriage. A distinction should be made between mental affections which are amenable to treatment and therefore curable, and those that are incurable. In the first case the personality of the individual is but temporarily altered. In such cases divorce would be an injustice. But when the intellectual and moral personality of the individual has disappeared without any hope of return to normal conditions, what should be the proper judicial attitude?

Before answering this important question, let us first briefly view the legislative acts in various European countries and in the individual states of the Union. In 1910 the new Civil Code of Germany generalized the various legal dispositions which existed in various forms in the individual states of that country, and admitted divorce in cases of insanity. (*Psychiatrisch-neurologische Wochenschrift*, article 1569. Marhold-Halle). The new law says: "Divorce may be granted when insanity exists during the married life for at least 3 years, when it reaches such a degree that common mental interest ceases, and when all expectations for recovery are given up." It makes, however, a provision that the obligations of maintenance of the insane person must be kept up by the person who obtained the divorce. This clause is highly moral and humanitarian, and it prevents at the same time the possibility of another motive in request for divorce, namely avoidance of supplying for the needs of the insane married person. So constructed, the law cannot raise serious objections.

Switzerland adopted in 1874 a federal law according to which insanity is placed among other causes of divorce, but it must be of three years standing, and must be declared incurable by experts. Besides, it must be shown that the conjugal life is difficult and impossible for the person that asks divorce, that the health, life, reputation, success in affairs, and future of the children are all jeopardized if life in common is continued.

In Sweden similar legislation has been in existence for the last hundred years. The royal decree says: "If one of the parties is suffering from a veritable mental affection which has lasted uninterruptedly at least three years, and if according to competent medical testimony there is no hope for recovery, the courts may grant divorce at request of the other party." It must be proven, also, that the mental affection had not been caused or aggravated by the conduct of the sane party. The term "veritable" does not impose any restriction, as all mental affections are "veritable." But the term, "uninterruptedly," includes at once the recurrent or the periodic psychoses, which fact



limits the application of the law only to a certain group of insanities, but not to all.

In Bulgaria the law of 1897 admits divorce, when one of the parties, after the marriage, is affected with dementia, idiocy, epilepsy or syphilis. In these cases divorce is permitted only after all the means have failed to bring on a recovery.

In the Republic of Ecuador, according to the law of 1902, insane individuals cannot marry, and insanity is a cause of annulment of marriage.

In Monaco the law of 1907 says: "When one of the parties is affected with insanity, epilepsy, alcoholic delirium or syphilis, divorce may be granted on the following conditions: (1) if the disease is incurable; (2) if the disease is of such a nature as to compromise the security and health of the other party or of the children born or to be born; (3) if the disease has lasted three years; (4) if the attacks of epilepsy or of alcoholic delirium are frequent."

It is evident that these provisions give full protection to the family, and prevent procreation of children with an undesirable inheritance.

In Portugal, the law of 1910 permits divorce for cause of incurable mental derangement, which has been in existence three years.

Germany, Sweden, Switzerland, Monaco, Bulgaria and Portugal seem to be the only European countries which have accepted the principle of insanity as a sufficient cause for dissolution of the marriage bond. Protection of the sane members of the family is apparently of great concern. The sentimental point of view is ignored. The majority of them accept a minimum of three years as a test for curability or incurability of a mental affection. Some of the terms employed by the legislators who formulated the laws may justly lead to controversies, and litigation. From a psychiatric standpoint they are debatable and do not cover all forms of mental disorder. Nevertheless, the laws themselves tend to prove a decided progress in administrative and prophylactic measures when the security of society and race is in jeopardy.

Let us now turn our attention to what has been accomplished in this direction in our own country.

The following states have no provision whatsoever with regard to mental disorder as a cause for divorce: Texas, New Jersey, the Philippines.

In the following states only for intemperance in the use of alcoholic beverages does the law permit divorce, but actual mental diseases which not only incapacitate the individual, but render others in the

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family insecure and create a possibility of engendering new lives which will be tainted, these the law does not mention: North Carolina, Illinois, Alabama, Arizona, Colorado, Connecticut, Kentucky, Louisiana, Michigan, Minnesota, Nevada, New Hampshire, Ohio and Rhode Island. Moreover in some of these states (N. H. and O.), a period of three years; in one (Ill.), of two years, in one (Minn.), one year, of continuous inebriety is necessary for obtaining divorce. In all other states, no limit is set as a condition of divorce.

In all other states of the Union, mental disturbances are mentioned as cause for divorce. Alcoholic intoxication is mentioned in some, and not in others. In South Carolina, where divorces are not allowed, annulment of marriage is permissible on the ground of "idiocy or lunacy."

We observe the same indefiniteness of thought and expression in the construction of the text of the law with regard to alcoholic intoxication as in the case of insanities. For example, in the state of Washington absolute divorce is permitted for cause of drunkenness, chronic mania or dementia; the last two conditions must have lasted ten years before divorce may be granted. In the first place, from a psychiatric standpoint it is unscientific to consider chronic mania and dementia as the only mental disorders which may be considered as insanities. By this provision all other psychoses are eliminated. In the next place, when a patient who is suffering from a mental disease has reached the phase of dementia, the condition is incurable. Then why wait ten years and condemn the sane party to great inconveniences and difficulties during such a long period of time? Another peculiar feature of the law is the term, "drunkenness." It is curious that no specification is made as to the degree and duration. Besides no protection is given either party, as on one hand the drinking person may be taken advantage of, and on the other hand, one party who is eager to get rid of the other, may intentionally absorb alcohol for the purpose of becoming and of being considered a drunkard.

In the provisions of some states (Wisconsin, Oregon, Oklahoma, Kansas), we find instead of the term, "insanity," the expression, "want of understanding." This is again inadequate from a psychiatric standpoint. There are periods in some forms of insanity when the understanding is good. In paranoia, for example, the understanding in many directions may be good, and still such an individual is not fit to cohabit with another person and bring children into the world.

In the state of New York partial divorce is granted when the conduct on the part of the defendant is such as to render it unsafe and improper for former to cohabit with another. Of course this provis-

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ion includes insanity. But in cases of mild melancholia or of dementia of a stuporous state, a position may be taken by the guardians of the defendant that the diseased individual's condition is perfectly compatible with safety for others because nothing had previously occurred to justify any fear. The case consequently may be contested and divorce denied. Nevertheless, the individual's mentality is really affected.

In Idaho the provision of the law leads to embarrassment. It directs that absolute divorce be granted in cases of permanent insanity, but no divorce shall be granted on the ground of insanity unless the insane defendant shall have been regularly confined in an insane asylum for at least six years next preceding the commencement of the action for divorce. The question arises: how about the insane individuals who are kept in the homes of their immediate relatives? If a sojourn in an asylum is indispensable for obtaining divorce, the latter class of individuals are not provided for by the law.

In the laws of other states, the terms, "hopeless insanity," and "incurable insanity" are used. In the state of Pennsylvania hopeless insanity has been a cause of divorce since 1843 (Section 8, April 13). It was amended in 1905, but the substance of the original act remains the same. It is the experience of every alienist that in a number of cases it is impossible to tell at any period of the disease, even years after the onset, whether recovery will follow or not. This so-called "remission," or period of lucidity of mind, may be, as is frequently the case, considered as recovery. Yet the patient is only temporarily improved. These remissions may be multiplied during the patient's illness, which may last many years. Because of the remissions, expectations of total recovery are cherished by those who are unfamiliar with the subject and divorce is denied. In Pennsylvania the above law seems to be so formulated that an avenue for misinterpretations is left open even in cases of incurable insanity. After this law was passed by the Legislature in 1905, the Superior Court in 1907 found, by means of a hair splitting argument, a way of rejecting a decision of the Court of Common Pleas by which divorce was granted in a case pronounced incurable by psychiatric experts. (*Baughman v. Baughman*, 34 Superior Court, p. 271; 1907.)

The term, "idiocy," is mentioned as a ground for divorce in several states. If an individual is found to be an idiot, his idiocy could not have developed after marriage. The scientific conception of idiocy implies a mental state which exists from infancy, and therefore it is discoverable before as well as after marriage. If the legislators intend to protect either of the contracting parties against mental disor-

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ders beside insanity, it would render greater service if protection were extended by them against mental deficiency in general. It stands to reason that an idiot is utterly unfit for cohabitation. But there is a large category of individuals suffering from obsessions, special fears, deficient will, deficient inhibition; there are hypochondriacs, individuals who possess an extraordinary instability of character, of disposition, of mentality; persons who are emotionally instable and impressionable. The number of such psychoneurotic individuals is legion. Persons with this special makeup are far more unfit for cohabitation than idiots. The lack of stability, especially characteristic of these individuals, renders the marital relations impossible; all associated with them are bound to suffer. From a psychiatric standpoint, psychoneurotic individuals are not insane in the strict sense of the word; they are borderland cases which have not yet crossed the line. As the law concerns only lunacy, divorce will be refused in cases of psychoneuroses, and yet from the standpoint of the welfare of society which assumes the welfare and happiness of each component member, the same party to the marriage contract is compelled to suffer indefinitely from cohabitation with the other psychoneurotic party.

Besides idiocy, there is a very large class of mental deficiency which is not mentioned in the provisions of the larger number of states. I wish to speak of various degrees of imbecility or feeble-mindedness, conditions which are not covered by the terms, idiocy and insanity. The unfitness of an imbecile or of a feeble-minded individual for conjugal life, the essential requirement of which is a common interest, is self-evident and still the law that saw fit to annul marriage in cases of idiocy or insanity did not make any provision for this class of individuals.

If divorce or annulment of marriage is to be granted at all on the ground of insanity, I believe that the following states have enacted the wisest law: California, Delaware, Tennessee, Utah, Virginia, West Virginia, Wyoming, Porto Rico, South Carolina, South Dakota, New Mexico, North Dakota, Massachusetts, Mississippi, Montana, Nebraska, Iowa, Maine, Hawaii. In these states the term, "insanity," evidently covers all forms of insanity irrespective of the intensity and character of the mental disorder. All possible controversies and misunderstandings are thus eliminated unless a court of justice has the power of declaring it unconstitutional, which has been done in Pennsylvania.

Georgia, Indiana and Kansas recognize as cause for divorce or for annulment of marriage, mental incapacity existing only at the time at which the marriage contract was made. But if insanity develops thereafter, the parties evidently cannot be separated.

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This brief review of legal provisions in various countries is sufficient to prove that not one of them is liberal enough to cover all phases of dissolution of marriage for cause of insanity.

Let us consider now, briefly, the state of mentality characteristic of various classical psychoses and also their duration; both factors will perhaps enable us to draw conclusions with regard to desirability or non-desirability of rupture of the matrimonial bond.

Paranoia, which is characterized essentially by systematized delusions, mostly of persecutory character, is a mental malady of the gravest character, and presents, generally speaking, a most unfavorable prognosis. It usually develops in individuals with a degenerate make-up. Common interest cannot exist between two parties who have contracted marriage if one of them is suffering from paranoia. Remissions occur in paranoia. They are characterized by apparent lucidity of mind. In spite of such an improvement, the paranoiac tendency always exists, and never leaves the patient. A certain specific delusion may disappear for a period of time, but sooner or later another delusion of analogous nature will develop and take place of the former delusive idea or ideas. Otherwise paranoia is essentially an incurable disease.

Dementia praecox is another very serious mental disease which usually develops in youth, and in which the affective functions suffer first and most. Delusive ideas of various nature, hallucinations of all kinds, may or may not accompany the disease. A gradually developing quantitative and qualitative loss of mentality is the chief manifestation. The disease is of very long duration. As to complete recovery, it is exceedingly rare, if it ever occurs. Occasionally considerable improvement in a general way is observed, but even then the activity, intelligence and the affectivity are all restricted. In spite of great amelioration in some cases, recurrences are always to be expected.

Manic-depressive insanity is a mental affection characterized by alternating phases of morbid depression and exaltation. Each of the phases may last a variable time, but what is particularly important from the standpoint of our thesis is the fact that each attack may be followed by complete restoration of normal mentality. This lucid interval may last an indefinite time. In some cases it is very brief—days or weeks—in other cases it may last months and even years. The special feature of this malady is that in spite of the lucidity in the intervals, the patient is always threatened with an attack, as indeed in the majority of instances repetition of a depressive or exalted condition is the rule during the patient's lifetime. It should always be borne in mind that in some cases the intervallary lucidity is not always com-

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plete. The prognosis therefore in such cases must be made guardedly.

Paresis is characterized essentially by a progressive enfeeblement of mental faculties. The disease commences usually in the most insidious manner. Memory and power of criticism both suffer early in disease. Sometimes the characteristic physical signs accompany the mental manifestations at the onset. The affection has for its anatomical substratum irreparable changes in the brain and in its membranes; also in the tracts of fibers emanating from the brain. Besides, it is well established that syphilis is the original and direct cause of paresis. The affection is incurable. Remissions, or lucid intervals, are observed, but as a rule they are not of long duration. In the majority of cases the duration of paresis is from two to three years.

Melancholia is characterized by a gradual development of a painful emotional state with depression, to which delusional conceptions are added. Among the latter, the most frequent, are ideas of worthlessness and self-blame. A tendency to self-destruction is always present. Suicide is frequent among the victims of melancholia. In some cases this is preceded by homicide. The disease usually occurs during the period of involution. The duration is long; of two or three or more years. In the majority of cases dementia is the terminal stage. Recovery has been observed in a small percentage of cases, but repetition of an attack of melancholia is a frequent observation.

Mental disturbances due to alcoholism deserve mention. The delirious and confusional states of acute alcoholism are well known. They are recoverable conditions. But in cases of recidivism, which is always to be feared in alcoholic intoxication, the mental state becomes very serious from the standpoint of the profound changes which alcohol is likely to produce. Chronic alcoholism leads to a gradually developing intellectual feebleness, viz., dementia. The prognosis is very unfavorable. Weakness of will power and energy, cloudy memory, loss of power of application to work, apathy, loss of sense of propriety, and finally, delusive ideas which are sometimes intensified by hallucinatory images—this is the mental status in chronic alcoholism. The evolution is progressive and the ultimate result is dementia.

In epilepsy there is usually complete lucidity of mind during the intervals. If, however, the epileptic attacks repeat themselves very frequently, a persistent change of personality may develop. Intellectual dullness is very conspicuous; the memory is weakened, conceptions are narrowed. Affective faculties also suffer. Patients have outbursts of anger and violence; they are egotistic and brutal. This group of symptoms constitutes the so-called "epileptic dementia." The prognosis is unfavorable.

The few typical examples of mental affections just described are presented here to demonstrate the extreme seriousness of the situation in which one party to the marriage contract is placed when the other is mentally affected. There are many other varieties of mental disorder which constitute mixed groups or unclassifiable affections. There are other mental conditions which technically could not be called insanities in the strict sense of the term, but the individuals thus affected are future candidates; they have not yet crossed the borderline; they are predisposed individuals. The instability of their character and disposition, eccentricities, abnormal tendencies, etc. (see above), render their married life most unhappy. In such cases the common interest which is the most essential requisite of married life is entirely wanting. The same remarks are applicable to the large group of mentally deficient individuals.

*Conclusions*—Divorce is a condition to be deplored. But the complexity of modern life and considerations of social order render it sometimes unavoidable. Psychiatry has a certain relationship to the question of divorce, because in a number of cases the conflict between the contracting parties is the consequence of a mental disorder. It is, of course, desirable in every case to avoid matrimony with a person who presents a degenerate, or neuropathic make-up, or suspicious hereditary tendencies. But once the marriage contract is concluded and mental disturbances subsequently develop, a grave question arises: should the matrimonial bond be dissolved? Is it an act of social justice to condemn a party of marriageable age to celibacy? Is it fair to permit procreation by individuals who will inherit the morbid tendency toward mental affections or mental deficiency and thus throw a heavy burden on the community? It is incontestable that a disease, generally speaking, should not figure among the causes of divorce. But when personal safety and life are concerned, legal separation is logically indicated. Cohabitation with an insane or otherwise mentally defective individual, not only places the life of the sane party in jeopardy, but what is more important from a social standpoint, it facilitates procreation of tainted beings.

With the exception of the acute cases, the chronic forms of mental diseases are, generally speaking, incurable. No alienist can tell with any degree of precision how long any given malady will last. Even in the so-called curable psychoses, the number of which is very limited, one cannot predict their duration.

An attack of delirium or confusion following an infectious disease usually disappears without leaving any trace. The same occurs in an occasional alcoholic intoxication. Divorce in such cases is out of the

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question. If, however, alcoholic delirium or confusion is repeated, there is a great possibility that the individual will suffer from chronic alcoholic intoxication, and that his mentality will undergo deterioration. The common interest which is essential in married life, can no more exist, and continuous cohabitation is an injustice to the sane person.

Chronic alcoholic individuals, paretics, paranoiacs and persons suffering from the other incurable mental affections enumerated above, threaten the race with deterioration by transmitting to the offspring profound degenerative stigmata. Qualitative as well as quantitative depopulation is bound to follow.

Approximately 80 per cent or 90 per cent of mental diseases are incurable. These individuals are a source of constant danger to their surroundings. What shall a woman do if her husband is incurably insane? If she has children, should she not be permitted to remarry, and by these means assure their existence? If the mother is insane, the husband can no more rely on her to bring up the children. Should he not be permitted to place them in the hands of another woman who will legally administer to them motherly care and attention?

A great many persons are opposed to divorce for religious or sentimental reasons. Fortunately the appreciation of marriage in modern society is acquiring more and more a social importance. It is considered as a civil treaty, concluded for the purpose of a carrying out mutual rights and duties. These mutual obligations are unquestionably sacred, but when they cannot be kept up because one of the contracting parties is no more capable of appreciating the importance of the great position, justice demands protection of the other party whose mentality is capable of thinking, feeling and acting normally. Divorce is evidently a step forward in cases of impossible married life. It is a measure of defense for the sane, and of preservation of society and of the race against procreation of the mentally abnormal. In the interest of the nation and the race, divorce should be permitted in cases of mental disorders.

I have shown above the inadequacy of the legal provisions of various states in this country. I have emphasized the fact, that wherever the law considers insanity as a cause of divorce, it is so formulated that it does not cover all forms and varieties of mental disorder, and leaves, therefore, possibilities for contest and litigation. If divorce is to be granted on this basis, the legal provision should be so formulated that it will affect not only the absolutely incurable psychoses, but also all varieties of mental deficiencies and abnormalities which, from a psychiatric standpoint, render common marital life an impossibility.



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The jurist and the psychiatrist are to be intrusted with the formulation of such a law. In preparing this important project for legislative action they must bear in mind the findings of the science of psychiatry. The curability and incurability of various mental disorders is very well established. Assuming that an approximate durability of a given psychosis cannot be ascertained for the purpose of including it in the list of affections that justify divorce, the latter should nevertheless be granted, and for this reason: experience teaches that serious forms of insanity usually develop in individuals of a degenerate make-up. If they are considered, for practical purposes, as having recovered, there is no guarantee that a recurrence in one or another form will not take place. Besides, they should not be placed in a position in which they may procreate.

Lucid intervals in the course of mental affections are misleading and should not be taken as recoveries. Otherwise the individual will be allowed to cohabit and thus procreation will be facilitated.

Paresis is an incurable disease, and no given period of time should be required as a test of curability.

In working out a law which will do justice to both parties of the marriage contract as well as to the community, a very detailed analysis of every possible mental disorder should be undertaken. The assistance of psychiatric science is here of prime importance. The study of this question must be undertaken with a scientific sang-froid. Justice, but not sentimentality must be the guide in this endeavor.

## REPORT OF COMMITTEE ON DISCHARGED PRISONERS.<sup>1</sup>

EDWARD F. WAITE.<sup>2</sup>

For many years the Prison Congress has listened annually to the report of its Standing Committee on Discharged Prisoners. Unless the field assigned to the committee has been a phenomenally fruitful one, it would seem that by this time its fertility must be well nigh exhausted. What remains for us to do? This question has so insistently recurred to the mind of the present chairman, in contemplation of a report at this meeting, that he has been moved to examine rather carefully the previous reports to which he has had access, namely those since and including 1886. While he has found a quite surprising variety in the treatment of the general theme, due to the ingenuity and research of some of the chairmen, he has also found repetition in abundance. Has not the time arrived to take much for granted and pass to new aspects of the subject, if there are any; or at any rate to matters about which it is not clear that all are yet agreed? It is perhaps the more appropriate that the committee should now survey the field and attempt to define its proper task, because its territory has been greatly narrowed through the appointment last year of the new Committee on Probation and Parole. For the first time the association differentiates, in its standing committee assignments, between the paroled or conditionally released prisoner and the man who is released without condition, or, properly speaking, discharged. Henceforth we shall avoid the confusion which has attended the use of the term "discharged prisoner," at these gatherings.

While one might wonder a little that the distinction was so slow to gain express recognition, it should be remembered that it is only within recent years that conditionally released men have been numerous enough to be appropriately grouped in a separate class. At the end of the second decade of the life of this association, the Elmira Reformatory and two or three of its earliest imitators were the only penal institutions in the world which admitted prisoners to parole before final discharge. It was natural that this method should engage the attention of those who have been charged with preparing the reports of this committee. There are three possible attitudes toward the man who turns his back upon the prison gate and steps forward into

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<sup>1</sup>Presented before the American Prison Association, St. Paul, Minn. Oct. 7, 1914.

<sup>2</sup>Chairman of the Committee, Judge of the District Court of Minnesota, and President of the Minnesota division of the Society for the Friendless.

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freedom, complete or qualified—the attitude of *laissez faire*, the attitude of hostile espionage, and the attitude of friendly aid. Plainly the last is the only one to be expected among persons interested in the scientific and humane treatment of crime and the offender. There is no problem of the released prisoner consistent with the spirit of this organization except the problem of rehabilitation. Accordingly one is not surprised to find that much of the work of the Committee on Discharged Prisoners has been devoted to the promotion of the parole system and its pre-requisite, the indefinite, or indeterminate, minimum sentence. It is certain that the progress of this great reform has been due in large measure to its repeated discussion by this association, and in such discussion the Committee on Discharged Prisoners has had a leading part.<sup>3</sup> What remains to be done in this field will doubtless be considered by the new Committee on Probation and Parole, who may be confidently expected to take the ground that there should be no final discharge until there is a fair chance of future abstinence from crime. The Committee on Discharged Prisoners has been relieved of the task which may well be regarded as the most important one to which it has addressed itself hitherto, a task which will not be completed until the principle of parole has been adopted for every American penal institution, and adequate methods have become universal. Henceforth the work of the Committee on Discharged Prisoners will be restricted to the subject-matter which its name properly connotes. Is there anything for it to do except to gather and report from year to year information as to what is actually being done by private and official agencies to help the discharged man regain, or in some cases gain for the first time, a normal status in the community? This would be well worth while as an interchange of experience and suggestion, and might be made a basis for valuable statistics. But if as respects principles and methods in its present field there remain important points which have not yet been considered by this association or upon which opinion is still divided, it would seem that one useful task which lies before the committee in the immediate future is to note and present such points and undertake to bring the association to common views concerning them.

If parole were universal; and if it were long enough, or the progress of the released man rapid enough, to always complete the work of rehabilitation during the parole period, the work of this committee would diminish to the vanishing point. The new committee would

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<sup>3</sup>Sec, for example, the admirable résumé, with consideration of principles and methods, in the report prepared by Dr. O. F. Lewis for the Baltimore Congress, in 1912.

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have the whole field. But we cannot reach that happy consummation until we have the true indeterminate sentence for all offenders, thoroughly efficient supervision and wise constructive aid during parole and infallible tests for discharge. Meanwhile some prisons will continue to discharge men without parole, and all prisons and reformatories will continue to discharge some men in whom parole has not had its perfect work. We shall have with us, therefore, for a considerable time to come, the man whose course in penal discipline has not adequately equipped him with Mr. Whittier's three Rs—"Self-Respect, Self-Reliance and Self-Restraint"<sup>4</sup>; and there is little prospect that the Committee on Discharged Prisoners will soon find itself out of a job.

In mapping out our progress there are surely some things which, after these years of discussion, we may consider well established. That prison discipline should be directed to the end of rehabilitation, and that official supervision during parole (when parole is provided for) should seek the same end, all will agree who have passed beyond the vindictive theory of punishment for crime. Until we reach such a point of enlightenment in law and administration that the unfit shall not be discharged, the agency which takes the discharged man in hand should receive him only after warden and parole agent (if any) have done their best with him. But even thus, the sad plight of the friendless man who is discharged without parole, or after brief and ineffective parole, is well understood in these gatherings. The need for wise assistance in finding work, overcoming obstacles and discouragements, escaping avoidable temptations and building up character is fully recognized. That here is a proper field for brotherly sympathy and helpfulness whether there be official aid or not, to give him, in Dr. Fredenhagen's happy phrase, "not charity but a chance," nobody will deny. That the religious motive is most important both to the friend and the befriended all will concede who know the inspiring and uplifting power of the Christian faith. This committee, as well as the Committee on Probation and Parole, will therefore need the continued co-operation of the prisoners' aid societies.

But in the suggested possibility of official aid we are brought already to a disputed point. Should the state concern itself with the discharged prisoner—unless, of course, he falls again into crime? The very essence of a discharge from penal custody is that it wholly dissolves the relation of duress which has existed. What further, if anything, remains for the state to do in order to fully perform its duty to

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<sup>4</sup>Report of committee in 1910, p. 30 of proceedings of Washington Congress.

its former ward (I use the word advisedly) and best serve its own interests? The question has never received attention from this association commensurate with its importance. There has been much and useful discussion of the respective provinces of the state and the private organization in dealing with the man on parole, but until the paper read by Mr. John Koren in connection with the 1912 report of this committee the proposition that the state ought to concern itself with the discharged prisoner after he has left the prison precincts with his suit of clothes, transportation ticket and paltry sum of money, was never definitely presented to a national prison congress. As early as 1889 the committee in a report prepared by Mr. Round, earnestly took the ground that such a course would be inconsistent with sound public policy. This position was restated in the report for 1894; and although suggestions to the contrary have sometimes appeared in the discussions, there has been no clear challenge of Mr. Round's position except Mr. Koren's paper, the weight of which, it must be admitted, is derived rather from the authority which attaches intrinsically to the opinion of its distinguished author, than from the fulness and conclusiveness of its reasoning. It is not clear that Mr. Koren keeps in mind the distinction between men who are paroled and those who are absolutely discharged, although it is plain that he includes the latter as objects of what he terms "an unrecognized obligation" of the state. The question may fairly be considered an open one; and its importance to accurate thinking about the discharged prisoner is fundamental. We therefore suggest as the first item of a program for the future work of this committee, a thorough consideration of the state's relation to the discharged prisoner.

Our parole and indeterminate minimum sentence laws need the test of experience which can be applied only through the collection of the most full and authoritative information possible regarding the careers of ex-prisoners after final discharge. Such information would also have a most important bearing upon the different theories of penal and reformatory discipline. By their fruits should they be judged; and if we are to determine relations of cause and effect we must at least know the sequential facts. Further, by gathering and making really scientific use of data upon reformation and recidivism much may be contributed to the next great penal reform, the indeterminate maximum sentence. Here again is an appropriate item for our program. Should we not appoint a qualified commission to devise a practical scheme for gathering and formulating statistics?

A neglected group of discharged men may be found among short-term misdemeanants, turned loose in appalling numbers from jails and

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workhouses. Many of these are "floaters," friendless and handicapped in the struggle for existence by physical or mental defect, lack of industrial training or long addiction to vicious habits. While here and there a humane and progressive workhouse superintendent does his best to effect a first step toward reform, it is true as a general statement that for the rehabilitation of this vast army of offenders the state does nothing during imprisonment nor after discharge. The tendency of the prisoners' aid societies is to concern themselves almost exclusively with men released from major institutions. The community as a whole is not even trying to do its duty to the less conspicuous but often equally distressful and needy minor offender; and the price of its neglect is vast expense and large increase of crime through preventable recidivism.

The desirability of institutional homes for the temporary care of discharged prisoners is still an unsettled question, though it has been frequently discussed at former congresses. Much of the opposition offered has been based on theory alone; but when one seeks to apply the test of experience he is confronted with the fact that all the presentations of experience have come from those who were actively engaged in the conduct of such institutions and whose recitals and conclusions may not unnaturally, though of course, unconsciously, be colored somewhat by their preconceptions. One thing is quite certain, either the temporary Home (when spelled with a capital) is either good or bad, in its very nature it cannot be indifferent. It is therefore of great importance that the influence of our association should be thrown in favor of sound views concerning this institution. Should not the Committee on Discharged Prisoners through an impartial and competent commission give the subject thorough study? Doubtless a favorable report, with explanation of methods demonstrated to be successful, would do much to promote the wider use of an agency which, if good, must be very good indeed.

Among other questions which seem to fall appropriately within the province of this committee, and which we do not find conclusively answered in previous reports and discussions, we select the following:

Should executive pardon and commutation of sentences be abolished? If not, in whom should this power be vested, and how safeguarded? What, if any, lessons are to be learned from experience relative to the exercise of the pardoning power?

Should there be general legislation, and if so, what, to provide for compensation to those who have been wrongfully convicted and imprisoned? What amends, if any, should society make to the man who has been unjustly indicted and imprisoned pending trial, and whose innocence is affirmatively established?

EDWARD F. WAITE

What is the proper basis for payments in money to men who are discharged without parole? If earnings are paid, should this be done in a gross sum or in installments?

How may we promote such an attitude of the police toward the discharged man as shall secure the degree of surveillance needful for the protection of the community, without undue and hostile espionage?

We are not professing to cover the entire range of profitable inquiry. Neither would we seem to minimize the value of the customary accounts of work actually accomplished by the agencies whether official or voluntary, which are really doing things for the discharged prisoner. We concur in the opinion expressed by Mr. A. W. Butler and by others at these congresses in different words, that "the greatest work that can be done for the discharged prisoner is the education of the people." To this end the public reiteration of the needs of the discharged men, the recital of facts that show how these needs may be supplied, and the stirring of the public conscience to realize the obligations of the strong to the weak, are of undoubted value, even if all that is said is familiar to regular attendants upon the meetings of this association. Get the public right in its attitude toward the ex-prisoner and the problem of rehabilitation is solved so far as respects environment and opportunity. The rest lies with the individual himself.

We are conscious that in this report we are making no immediate advance toward the clearing up of the still unsolved problem of the discharged prisoner. But we shall have accomplished our purpose if we have contributed to a clear understanding of the field in which this committee may most profitably perform its future work. Only by some such survey, it has seemed to us, may waste of time and duplication of effort be avoided. We seek to place the stakes in order that those who shall come after us may the more effectively make their intensive explorations and do their constructive work.

## A RESEARCH ON THE PROPORTION OF MENTAL DEFECTIVES AMONG DELINQUENTS.

AUGUSTA F. BRONNER.<sup>1</sup>

A careful study of the proportion of mental defectives among delinquents is extremely timely. There exists a great discrepancy between the general opinion of thoughtful and experienced observers, such as judges, probation officers and teachers, on the one hand, and statements made by some experimental workers on the other. The percentage of feeble-minded among offenders, according to these statements, has ranged even as high as 89 per cent. Teachers who know the large number of delinquents who can do, and have done in their class rooms, 7th and 8th grade, and even high school work, express themselves as greatly surprised at these extraordinary figures.

Now, in all studies of offenders, we must recognize at once the fact that we are dealing with a selected group. For, of course, such investigations can take into account only the *caught* offender. Those who, because of unusual cleverness or because of fortunate circumstances escape detection and arrest, may be equally or more culpable than those apprehended. Though intelligence is not the only factor responsible for the lack of detection and arrest, yet it is undoubtedly a large one. This means that in all studies of offenders, there is a selective force operating which tends to eliminate the brightest and most capable.

Nor is this all; for the majority of such data as have appeared have been based upon the study of those in institutions—in reformatories and state industrial schools. When this is true we have not merely a selected group, but rather a selected portion of an already selected group. For now-a-days there is a tendency to commit to institutions only the most incorrigible or the least hopeful offenders. With our present system, all those believed capable of reformation under probation are given this opportunity. In consequence we should expect to find a larger percentage of the dull and incapable among those sent to reform and state schools than among those released on parole.

These facts necessarily influence in a large measure the results of investigations and give a picture that is distorted if applied generally. The results should be interpreted as showing conditions that exist among the group investigated only. Unfortunately, only too often the data are quoted as if representative of offenders in general. If 25 per cent of the inmates of reformatory institutions are found to be mentally defective,

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that does not mean that 25 per cent of all offenders are mentally defective, nor that one-fourth of all crimes committed are to be explained on the basis of mental incapacity.

Another criticism of these same studies must be made. In a recent address before the American Prison Association, Kuhlmann, one of the psychologists most experienced in the study of the feeble-minded, pointed out very clearly and convincingly that errors in procedure employed in obtaining, as well as in evaluating, results have led to untenable conclusions. He cites the fact that typical reformatory cases, averaging from fifteen to twenty years of age, can only be inadequately studied by the Binet-Simon tests. These are unsatisfactory for measuring the grade of intelligence of those with a mental age above ten years, because the scale has no tests for 11, 13, and 14 years, and therefore must be unfair to those who might do well on such age tests were they available. The fact that there are but five tests, those for 12 years, even in the least accredited for the ages above 10 years, makes the determination of the mental status of older individuals by this system alone a farce. Kuhlmann shows that serious mistakes have also been made in the case of many offenders by using as the definite criterion of defectiveness the mental age obtained by the use of the scale; or by stating the difference between actual age and mental age. Further discussion of these points would carry us too far afield, since they belong to a detailed critique of the Binet tests and their application. Suffice it to say that most of the studies that have appeared can hardly be accepted as giving accurate or reliable information. Indeed, most of the discussion one hears so commonly now-a-days about the "mental age" of adolescent and adult offenders is veritable nonsense.

Again all mental studies present certain other grave difficulties. There is always to be considered the attitude of the person studied, as well as that of the experimenter. The mental examinations made in courts just prior to trials are much affected by the emotional condition of the examinee. This question of attitude is very important. The experimenter himself is often much hurried, the examination has to be made at once, he has no opportunity of winning the confidence of the subject, who, therefore, does not always co-operate fully and thus fails to do himself justice. On the other hand, the subject's reactions may be greatly influenced by the emotional stress under which he is laboring. We have had conclusive evidence of the excessive inhibitions due to fear or excitement. We have found cases where the boy or girl, tested first under these unfavorable conditions, has been unable to cope with a situation which under normal conditions occasions him no difficulty at all. Knowledge that one is to appear shortly before the judge, creates such a

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state of mind as to vitiate all results. This is true whether it results in inhibitions that lead to real, though temporary, inability or whether, because of personal motive, the inability is feigned.

It is not easy, at best, to present the Binet tests in a natural manner, especially to older persons. They are somewhat artificial, one following the other without any apparent connection. We find that for older subjects they are often a bore and in their eyes not infrequently an insult. If their purpose is really understood many subjects plainly show that they resent the implication and will make no effort to succeed.

In order to make such examinations with the minimum amount of unfairness, they should be conducted in a quiet place with no one present but the experimenter and the subject. We know from accounts given us that witnesses present tend to cause embarrassment and the proper spirit of friendliness and freedom cannot be established. The tests should not be plunged into at once. Some approach that arouses interest and co-operation and puts the examinee at ease is necessary.

At best there are certain practical difficulties in court work; certain external factors, often most important, enter into the problem when only brief examinations are made. The handicaps due to defective vision and defective hearing are often not appreciated. Mental dullness may be caused, in part at least, by physical ill health and the pernicious effects of bad habits. Again, in practical experience, we find the language factor a weighty one. Not only are there often those who are foreign born and who have acquired the new language but imperfectly, but equally as often there are those native born who still have had but little opportunity of mastering the language. To these some of the tests are quite incomprehensible. All these points must be kept in mind if one would gather and interpret statistics fairly.

In the hope of making a study which for the statement of proportionate statistics would be as fair as possible, a research was undertaken by the Psychopathic Institute of the Juvenile Court of Cook County. While it is true that here, too, we are dealing with a selected group to the extent that it represents those brought to the Detention Home, yet it is much less selected than any other. It represents first offenders as well as recidivists, and those brought on complaint of parents as well as those caught in wrong-doing. It is an entirely different group from those who are studied very thoroughly by Dr. Healy. Previous statistics regarding cases examined by Dr. Healy are based on his study of 1,000 repeated offenders, but these were highly selected cases, since all were not only repeaters, but most of them were very troublesome and difficult cases as well. The fact that they represented the very stupid, the very incorrigible, the extreme delinquent, was the reason that they required unusual and de-

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tailed study. But even among these the proportion of mental defectives was not nearly as high as given in other assertions of some investigators.

The present investigation was made of 505 cases of delinquent boys and girls in the Detention Home taken consecutively in groups as follows: On successive weeks during the months of April, May, June and September a cross section study of all delinquents in the Home was made. These children were not appearing in court on the day of examination, nor did they know that the examination had any reference to their trials. All tests were made individually by the same experimenter; in every case sufficient time was allowed to establish a feeling of friendliness before beginning the tests.

It is obvious that it was not necessary to give the Binet tests to all members of this group, for it cannot be questioned that those pupils who are able to maintain their standing in the upper grammar grades or in high school are certainly not feeble-minded. In consequence the following plan was used: Each Wednesday there was given a school test consisting of writing from dictation and of solving a problem of long division in which the divisor was a three place number and the solution required handling a zero. On the paper each boy or girl recorded his or her age, the school attended and the highest grade reached. These facts were corroborated by the Home record.

Where no school retardation was found and where the 6th, 7th, 8th or higher grade had been completed and evidence of having profited by educational opportunities to the extent at least of the above school work was given, nothing further was done and the subject was considered normal in ability. However, in cases where retardation was found, though the work was done correctly, or where the school work was not done correctly in spite of a high grade having been reached, the boys and girls were taken singly and examined by using the Binet tests. In addition to this all cases which the house physician felt to be subnormal or feeble-minded, and those whom the probation officers and school teachers brought to our attention, were examined also. Thus to be classed as normal the boy or girl would be so considered by physician, probation officer, and teacher; at least 6th grade must have been reached; there must be no retardation; and the individual must be able to do fairly advanced school work. This would undoubtedly preclude most, if not all chances of error.

In doubtful cases the Binet tests were used because they are in general use and are now so generally known and talked about. Many of the cases were studied in much greater detail; where language seemed a large factor other tests not involving language were used as supplementary.

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The cases obviously quite unnecessary to study by tests for feeble-mindedness number 270—194 boys, 76 girls. Of the 235 remaining, 112 were studied by both the Binet tests and many other tests as well for the various recommendations which the Psychopathic Institute is called upon to give. Another 112 passed normal by the Binet test for their chronological age, or did correctly the 12-year group of tests; while the remaining 11 cases, where this is not true, are those later classified as doubtful.

Though we have long felt—and indeed Dr. Healy long ago said—that the Binet-Simon tests are reliable only through 10 years, yet in the present study the tests through 12 years were used in order to make the results as nearly comparable as possible with other studies of the problem. However, where subjects above 14 years of age succeeded in passing all the 10-year tests and some, but not all, of the 12-year tests, we cannot agree with those who would declare this as evidence of subnormality, much less of feeble-mindedness. These cases we may regard as doubtful and in need of further testing—almost all such were so studied—but we would not designate them as defective by Binet tests alone. In Table I given below we have tabulated in one series all cases found definitely and positively feeble-minded, and those found definitely and positively normal. In another series the figures represent those whom some would regard as possibly feeble-minded and those probably normal on the basis of the Binet-Simon tests alone.

TABLE I.

NUMBER OF CASES.			PERCENTS.		
	B'ys.	G'ls. T'tl.		Boys.	Girls. Totals.
Normal . . . . .	337	116 453	Doubtful . . . . .	2.4%	1.6% 2%
			doubtful) . . . . .	9.4%	12.8% 11.1%
			Possibly (including		
			Probably . . . . .	7%	11.2% 9.1%
Feeble-minded . 26	15	41	Feeble-minded:		
			doubtful) . . . . .	93%	88.9% 90.9%
			Possibly (including		
			Without doubt . . .	90.6%	87.2% 88.9%
Doubtful . . . .	9	2 11	Normal:		
	<hr/>	<hr/>			
	372	133 505			

From the above figures we see at once that the percentage of our delinquents who are undoubtedly normal ranges about 90 per cent. The nine doubtful cases of boys and two of girls represent those who have passed the 10-year tests successfully, failed on some of the 12-year tests,

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and were not further studied by other tests. These cases we ourselves would not consider as being feeble-minded. The standard used, namely, having completed the upper grammar grades, and being able as well to perform the school test, gives us a double check at least on our group, and furthermore, inasmuch as these data have likewise been corroborated from other records, there can be practically no doubt that none of these subjects could be classed as feeble-minded. Including them, however, among the defective we find 90.6 per cent of the boys and 87.2 per cent of the girls normal in mental ability though it is much more likely that 93 per cent of the boys and 88.8 per cent of the girls belong in this class. However to satisfy all those who would disagree with this standard on Binet tests and who would insist that all 12-year tests must be passed as well we have found the percentage of defectives on this basis too. The present aim is not to determine what degree of ability they may have but merely to satisfy ourselves that they are normal at least.

Combining the boys and girls found in the Detention Home we find in our group of 505 that without doubt 88.9 per cent are normal in intelligence and that almost certainly the truer figure is represented by 90.9 per cent. The average age of the cases is 15.2 years. The girls are slightly older than the boys for the average in their case is 15.8 years as opposed to 14.5 years on the part of the boys. The entire age distribution is shown in Table II.

TABLE II.

Age—	Boys.	Girls.
7-6 to 8-6.....	1	...
8-6 to 9-6.....	4	...
9-6 to 10-6.....	9	...
10-6 to 11-6.....	18	1
11-6 to 12-6.....	16	6
12-6 to 13-6.....	40	10
13-6 to 14-6.....	55	5
14-6 to 15-6.....	86	23
15-6 to 16-6.....	89	35
16-6 to 17.....	28	...
16-6 to 17-6.....	..	36
17-6 to 18.....	..	17
	<hr/> 347	<hr/> 133

In order to determine the reliability of our figures and to show to what extent they are representative of conditions that might be found at any time other than the four months during which the investigation

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was carried on, the figures were computed for each of the months separately. If we find they do not vary much one month from the other, we may feel that the results are not matters of chance but typical and true for any period. Dividing our entire group into those studied during the months of April, May, June and September, we have the following tables:

TABLE III.

Girls—	April.	May.	June.	Sept.	Totals.
Normal .....	27	28	29	32	116
Feeble-minded .....	3	5	3	4	15
	10%	15%	9.1%	10.8%	11.2%
Doubtful .....	..	..	1	1	2
Totals .....	30	33	33	37	133

TABLE IV.

Boys—	April.	May.	June.	Sept.	Totals.
Normal .....	74	48	117	98	337
Feeble-minded .....	6	4	8	8	26
	7.3%	7.7%	6.2%	7.2%	7%
Doubtful .....	2	..	3	4	9
Totals .....	82	52	128	110	372

Thus we see that the percentage is fairly constant throughout the different periods and the figures cannot be subject to any great error.

These results are not contradictory to the common sense experience of judges and others who deal with delinquent adolescents. Those who are familiar with these problems know from their own experience the number of adolescent offenders who are extremely bright and whose delinquencies arise so very often from causes other than lack of mental ability. Even those experimental workers who have been interested in this question for a long time, but who are not seeking merely for startling figures, have become skeptical of conclusions that have been previously published and have in large measure modified their own opinions. On the basis of their larger experience they feel that these results are unwarranted and only possible on the basis of errors made in obtaining them. They, too, are inclined to believe, both from the evidence of statistical and experimental work, as well as from the opinions of those who have gathered first hand knowledge through working with delinquents, that the percentage of the feeble-minded is quite small as compared to those who cannot be so classed, but who nevertheless, because of many other factors involved in the problem, become delinquent.

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CONCLUSIONS.

- (1) All studies of offenders are based necessarily on a selected group.
- (2) Studies made in institutions deal with a highly selected group.
- (3) All such studies are necessarily unfair representations of the whole body of offenders.
- (4) Studies made in courts just prior to or immediately following trials are subject to grave errors, due to the attitude of the examiner, examinee, or both.
- (5) External factors which act as handicaps to the examinee are sometimes involved.
- (6) The use of inadequate tests and errors in procedure invalidate the results given in numerous studies previously published.
- (7) On the basis of a study of more than 500 cases in a group as little selected as is possible to obtain, we find the percentage of feeble-minded to be less than 10 per cent, while the group of those normal in ability exceeds 90 per cent.

## ALCOHOL AND CRIMINALITY.<sup>1</sup>

### TO WHAT EXTENT SHOULD CRIMES COMMITTED IN A STATE OF ALCOHOLIC INTOXICATION BE CONDONED?

OLAF KINBERG.<sup>2</sup>

It is generally admitted that there exists a close relationship between the abuse of alcoholic drinks and criminality, and that alcoholic intoxication, acute or chronic, is a more or less direct, more or less important, cause of crime. Nevertheless, after all is said, it must be admitted that we are still but poorly informed concerning the nature, and above all, concerning the extent of this relationship, since criminal statistics which would throw sufficient light upon the causal relation between crime and alcohol are still wanting. On the other hand, it is evident that the simple fact that a crime was committed by an individual in a state of alcoholic intoxication, whether acute or chronic, does not in any way prove that intoxication was the determining cause of the crime. The question which one should put to oneself concerning this subject has been very well formulated by a committee appointed by the Swedish Medical Society to make researches into measures to be taken against the abuse of alcoholic drinks, viz., if alcohol did not exist, how many and which crimes committed during a certain period of time is there reason to believe would not have been perpetrated?<sup>3</sup> The statistics actually in existence give no solution of this problem. In Sweden, for instance, one always finds in the annual reports of the present administration, data concerning crimes committed during drunkenness. Permit me to cite some of these data from the annual report for 1909:

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<sup>1</sup>Translated by Bernard Glueck, M. D., senior assistant physician, Government Hospital for the Insane, instructor in psychiatry, George Washington University.

<sup>2</sup>Professor of psychiatry and of medico-legal psychiatry and director of the City Hospital at Stockholm.

<sup>3</sup>Alkoholen och samhället, 1912, p. 29.



OLAF KINBERG

TABLE I.

Crimes Committed by Individuals Sentenced to Imprisonment, and Admitted to the Swedish Penitentiary During 1909.

I	II	III	IV	V	VI
Crime.	No. of Persons.	No. of those whose crime was committed during a state of drunkenness.	No. of those who were alcoholic before the crime but did not commit their crime in a state of drunkenness.	The figures indicated in col. III are per cent of those in col. II.	The figures indicated in col. IV are per cent of those in col. II.
Rebellion . . . . .	331	212	7	64.05	2.11
Violation of domicile. . . . .	93	79	8	84.95	8.02
Assault . . . . .	519	388	31	74.75	5.97
Murder . . . . .	20	17	1	.85	5.
Attempted murder . . . . .	67	26	16	38.81	23.88
Theft . . . . .	1303	479	197	36.76	1.51
Swindling . . . . .	126	19	18	15.08	1.42
Forgery . . . . .	96	13	20	13.54	20.83
Military offenses . . . . .	180	82	11	45.56	6.11

One sees, therefore, from these figures that drunkenness bears quite a bad reputation in these statistics, and indeed, it can hardly be doubted that it does play an important role among the causes of crime. But, admitting all this, there is certainly reason for not accepting these figures without great reservations. The figures relating to theft especially seem doubtful, either because the number of thefts committed in a state of drunkenness are much lower in the statistics of other countries (e. g., in Baden only 7 per cent, against 40.15 per cent in Sweden), or because among our thieves the number of chronic alcoholics is much lower than that of occasional drinkers. If one observes the manner in which the figures of the statistics of the present administration are grouped, figures upon which the table given above is arranged, one finds that this grouping is not a very efficient one, since it is not known how many chronic alcoholics are included in the rubric of those who have committed their crimes in a state of intoxication. Hence the impossibility of making a useful comparison between the two groups. In order to furnish the proper information, a table of the penitentiary report should include three groups: First, those who without being chronic alcoholics committed their crimes in a state of drunkenness; second, those who, being chronic alcoholics, committed their crime in a state of drunkenness; third, those who having been chronic alcoholics before the crime, nevertheless, did not commit the crime in a state of drunkenness. Aside from this fault of method, there are in the cited statistics numerous sources of errors. The criminal is quite likely to ascribe his act to drinking, this being, according to common belief, some

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sort of excuse. On the contrary, he is very loath to admit voluntarily that he is a chronic alcoholic. Aside from this, the statements of these individuals cannot as a rule be verified, because the original records of inquiry are not at the disposal of the penitentiary officials who collect these data. Finally, these officials cannot perhaps be entirely exempt from a certain tendency, unconscious no doubt, of regarding alcohol as the scapegoat of the greater part of the evils of the world, and therefore, also of criminality.

More extensive researches on the relations between alcohol and criminality were made in Sweden by Wieselgren between the years 1877 and 1897, and by Wiren between the years 1898 and 1907. These researches gave the following essential results: (Quoted from Swedish Medical Report.)

Among the men condemned to the penalty of convict labor and imprisonment, about 73 in a hundred have themselves imputed their crimes to alcohol. Among these the number of those who were considered as having committed their crime in a state of drunkenness is four times larger than the number of those who have abused alcohol or have used alcohol to excess before the perpetration of the crime. Women commit fewer crimes caused by acute or chronic alcoholism than men. Considering the influence of alcohol on the kind of crime, crimes against the person, such as violation of the home, assassination, murder, assault, brigandage, resistance to the police, are relatively more numerous than crimes against property. Theft, however, makes up half of all the offenses, and among these, 65 in a hundred are considered as having been caused by alcoholism.

The Swedish committee quotes again a statement of the Committee of Fifty (United States), viz., among more than 13,000 criminals examined, it appears that the abuse of alcohol was a concomitant cause of criminality in nearly half of the cases; that it was the principal cause in 31 per hundred cases, and the only cause in 15 per hundred. Researches made in Denmark by a committee appointed by the government for the purpose of determining measures to be taken against alcoholism and for the purpose of ascertaining what influence alcohol had upon the crimes which came before all the tribunals of the land during the period between October 1, 1903, and October 1, 1904, gave the following results: Among all those condemned, 50 per hundred were addicted to the use of alcohol, while among the rest, 25 per hundred committed their delinquent acts while under the influence of alcohol.<sup>4</sup> Among the crimes considered here were included mendicancy, vag-

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<sup>4</sup>Alcoholen och samhället, p. 30.

abondage, and crimes of a graver nature. Since it is necessary to judge of the value of these statistics in order to appreciate the extent of the influence of alcoholism on criminality, the first question which presents itself is: whether the original statements were collected in a manner which would prove that the crime was actually committed under the influence of alcoholic intoxication. For the reasons previously given, this cannot be determined for the Swedish statistics. But even in the case where the state of intoxication at the time of the perpetration of crime may be held to be confirmed, it cannot at all be proven that the intoxication was the determining cause of the crime, for as Halläger remarks, in many cases alcoholism and crime do not stand in the relation of causality, but are parallel phenomena. On the contrary, there are cases where alcoholism may be considered as a determining cause, though indirect and remote from the crime; cases where unfavorable influences of the environment produced by alcoholism of the parents or of near relatives, may lead an individual to criminality without being an alcoholic himself.<sup>5</sup>

Nevertheless, in spite of the legitimate objections that may be made against the premature conclusions drawn from statistical statements on the relation between alcoholism and criminality, experience has proven that the abuse of alcoholic drink is the determining cause of a considerable number of crimes, and that if this abuse did not exist, many of the most revoltingly brutal crimes would disappear. Since the attempt is made to give a very exact and minute representation of the importance of alcohol as a cause of crime, it might be well to consider separately acute and chronic alcoholic intoxication in their relations to crime. In endeavoring to demonstrate the genesis of criminal acts committed in a state of acute intoxication, one must start from the psychic effects of acute alcoholic intoxication. That is to say, among the mass of psychic symptoms of acute alcoholic intoxication the following, from a criminalistic point of view, are of the first and greatest importance: First, an increased tendency towards emotional manifestations (anger, joy, chagrin, mistrust, etc.); second, a heightened motor excitability; third, a leveling of ideas with reference to their ethical significance, which carries with it a lessening influence of ethical concepts upon the acts of the individual. From the exaggerated emotionalism and from the motor overexcitability are derived all that series of criminal acts which may be grouped under the name of violent motor discharges. To this group belong the acts designated in the penal code under the names of noise, disturbing the peace, depre-

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<sup>5</sup>Quoted from Ley and Charpentier, *Alcoholism and Criminality*.

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dations on property, resistance to the police, fights, violation of the home, assault and murder. The same psychological factors that are responsible for the lowered ethical state may engender acts which, though subserving a normal desire, for instance the sexual desire, do so in a criminal way; e. g., violation. It also happens that abnormal desires which the individual may control when he is sober, or which are more or less concealed by him, manifest themselves in acts during drunkenness. As examples may be cited homosexual acts, committed by individuals who when sober show no homosexual tendencies. Cases are known where other abnormal desires are brought into play during drunkenness, as for example, the case of an individual who starts voluntary conflagrations whenever intoxicated, without ever having shown in a state of sobriety any pyromanic tendencies. It should also be noted here that drunkenness may very frequently figure as an accidental cause of attempts at murder committed by abnormal individuals or by the insane; e. g., imbeciles, idiots, demented seniles, etc., and who only commit these crimes in a state of drunkenness. Finally, mention should be made of a series of crimes whose origin connects them chiefly with the ethical leveling produced by alcohol, viz., petty thefts and swindling, committed in a state of drunkenness by persons who, when sober, have never rendered themselves guilty of such offenses.

The psychic features of chronic alcoholic intoxication which are of especial criminalistic importance are, first, the ethical leveling which is here preeminent as long as the intoxication lasts, while it is temporary during acute intoxication; second, the lowering of the capacity for physical and mental work; third, alcoholic psychoses. The first two effects of chronic intoxication are regularly met with; the last occurs only in a relatively small number of chronic alcoholics. It goes without saying, that the effects of acute intoxication on the emotions and on the psychomotricity accompany also chronic alcoholism, especially when it is complicated by an acute debauch. The connection between chronic alcoholism and criminality is frequently brought about through the individual's incapacity to satisfy the exigencies of life on account of the social incapacity caused by alcoholism. Often the development of criminality in chronic alcoholics takes the following course: The capacity for work is diminished, thus reducing the individual's ability to earn his livelihood, and bringing him to a lower social level; soon the individual can no longer supply his needs by means of work; the temptation to procure by criminal acts that of which he has need is not late in coming, and when it does arrive the individual succumbs to it, the moral degeneracy having already leveled the road to crime. In these

cases, the crimes are often of an economic order, such as thefts, swindling, forgery.

No pronounced difference between acute and chronic alcoholic intoxication exists from the point of view of the dominant forms of criminality, a fact which is not surprising since chronic intoxications present themselves often under the form of a series of acute intoxications. Frequently one finds also with chronic alcoholics, brutal crimes such as assault, murder, assassination, attempts to kill. Nevertheless, that which is the chief difference between the criminality of acute intoxication and that of chronic one is that in the latter, economic crimes play a much greater role than in the former.

The questions which arise from the foregoing may be formulated in the following manner: To what extent should the genesis of various forms of criminality be imputed to alcohol? In endeavoring to reply to this question it is, I believe, indispensable to consider crimes committed during acute drunkenness separately from those perpetrated by the chronic alcoholic.

As regards brutal crimes committed in a state of acute intoxication, experience has shown that a large part of these ought to be placed to the account of alcohol. Nevertheless, it should not be forgotten that there are still other important circumstances which contribute to produce the criminal act. It has also been remarked, and justly, that the increase of brutal offenses during Saturday, Sunday and Monday should be attributed not alone to the greatly increased consumption of alcoholic drinks, but in some measure to idleness, which multiplies the chances for collision within those days. There are many more persons in the restaurants and the other places of amusement during the days mentioned than during the rest of the week. However, it appears to follow from the number of arrests for drunkenness and for offenses in connection with drunkenness in Norway, where the retail saloons are closed from Saturday evening to Monday morning and where the minimum number of arrests falls on Sunday, that it is always alcohol which plays the greatest, if not the sole part in the increase of brutal offenses during the days named.\*

Since the individual disposition to violent reactions is of considerable importance in the genesis of brutal crimes, it is only a small number of those acutely intoxicated who smash windows and play with knives. As to those who commit murderous attacks in a state of acute drunkenness, it should be remarked that many important researches

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\*Dr. Hercod in *L'Annaire anti-alcoolique*, 1910, quoted from Ley and Charpentier, *Alcoholisme et Criminalité*.

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have shown that among this class of criminals there are a great number of abnormal and insane individuals. As regards thefts committed in a state of acute drunkenness I have already shown that the figures of the Swedish criminal statistics are probably very erroneous, since they go far beyond analogous figures of some other countries.

From the remarks here made it follows that, even for the crimes committed in a state of acute drunkenness, it would be wrong always to consider alcohol as the essential, still less as the only cause.

This argument holds good still more forcibly for those crimes which are committed during a state of chronic alcoholic intoxication. It is in this category of criminals that one seeks to find the binding cause which connects alcoholism with criminality. Here it is quite essential to reckon with the inner causes of alcoholism; that is to say, the psychic qualities which belonged to the individual before he commenced the abuse of alcohol, since many researches demonstrate that there is found in a large proportion of these individuals a psychic defect, either congenital or acquired. Thus Mr. Geelvinch<sup>7</sup> has found that among 600 chronic alcoholics there were 8.3 per cent imbeciles, 2.8 per cent hysterics, 12 per cent epileptics, 3.5 per cent psychopaths of other varieties, 2.5 per cent traumatics, and 2.1 per cent demented hebephrenics. Finally defects, either congenital or acquired, are found in 44.4 per cent of men and 50 per cent of women. The work of Stocker<sup>8</sup> and others have shown the necessity of taking into consideration this fact of fundamental importance. Therefore criminal chronic alcoholics are, in great proportion, originally inferior individuals who are attracted to alcohol as the moths are to the flame. Their moral and physical decay progresses constantly under the deleterious influence of alcohol.

In rendering an account of the influence which chronic alcoholism may have on criminality, attention should be directed to the composition of two groups of criminals who exercise a considerable influence on criminality, chiefly from the quantitative point of view; that is to say, passive habitual criminals and vagabonds. The passive habitual criminals thus named by Aschaffenburg<sup>9</sup> are individuals whose criminality is the result less of pronounced criminal tendencies, which in general are not found with them, than of their social incapacity, the root of which is their mental inferiority, discoverable, according to Bonhoeffer's researches, in about 75 in a hundred of this class. The same assertion has been made for vagabonds (Bonhoeffer, Willmanns and others). By

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<sup>7</sup>Ueber de Grundlagen der Trinksocht.

<sup>8</sup>Klinischer Beitrag Zur Frage der Alkohol Psychosen.

<sup>9</sup>Aschaffenburg "Das Verbrechen und seine Bekämpfung."

most authorities it has been established in a manner sufficiently reliable, that a large part of the individuals belonging to these two groups are also chronic alcoholics, but as soon as they become alcoholic they are criminal chronic alcoholics. It is further found that passive habitual criminals, vagabonds and criminal chronic alcoholics, are groups of criminals which in reality cannot be well separated one from the other, and which may be considered without inconvenience as a single large group. Assuming that in this group we have to do not with a single cause of criminality—chronic alcoholism—but with yet another cause no less important, viz., original psychic inferiority, it would be illogical to impute all that criminality to chronic alcoholism alone. If one wishes to express this thought by employing the form used in the question which I propounded at the beginning of this study, it may be said that even if chronic alcoholism did not exist, only a part of the crimes actually committed by chronic alcoholics would disappear. It need not be emphasized that the amelioration of criminality associated with chronic alcoholism which would follow the suppression of alcoholism cannot at the present moment be expressed in a mathematical relation. The solution of this problem must, therefore, be postponed to the future.

If I take my position a little reservedly in regard to the problem of the causal relation between alcohol and criminality, and if I oppose beliefs a little Utopian concerning the anticipated good effects on criminality in general which would result from the total suppression of alcohol—views often found in scientific literature—I am pleased to find my views supported by one of the most sagacious and most circumspect of French criminologists<sup>10</sup> of today.

In a discussion of French criminal statistics which first appeared in the Lacassagne Archives in 1901, this scientist expresses his regret in the following manner:

“One should not, if one wishes to be abreast of the times, continue to use alcoholism as the handy and easy reply to all embarrassing problems and charge it with all the sins of Israel, all our crimes, all our suicides, all our nervous disorders.

“I believe that a large part of the increased proportion of cuttings and maimings is due to the diffusion of habits of alcoholism, but I am persuaded that this is not sufficient to explain it, unless the expression is considered to signify also that moral alcoholism which feeds the strife of parties, the daily inflammation of the hatred of citizen against citizen by the press and by speech.

“These incitations explain as well and better than the little glass in the morning the anomaly of a constant progression of brutality in a

<sup>10</sup>Tarde, *La Criminalité en France dans les vingt dernières années Archives d'Anthropologie Criminelle*, 1903, p. 162.

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time when the incontestible progress of civilization should soften the manners of the people."

As to relations between alcoholic psychoses and criminality, it is a well known fact that the greater part of crimes committed by individuals suffering from a mental malady of alcoholic origin are violent aggressions (assaults, murders, assassinations) springing directly from delusional ideas of persecution, of jealousy and which are often found in these patients. Consequently it is not necessary to enter into details on this subject.

Passing now to the question of the means of treatment which a rational criminal policy should apply to alcoholic criminals, it is evident that the object of social reactions against these criminals should be the same as for other criminals, to-wit:

First. To prevent the criminal from falling into repetitions (of the crime).

Second. To exercise an educating influence on public opinion.

Third. And outside of that, the social reactions should be reorganized in such a manner that they entail only a minimum of harm; that is to say, that they inflict no unnecessary suffering on the criminal nor economic or other useless expenses on society.

Albeit such reactions presuppose in the first place a profound and detailed knowledge of the general psychology of the alcoholic as regards the causes that make him drink and then of the personality of the criminal individual chiefly from the point of view of the degree of danger which he presents to society.

In speaking here of the general psychology of the alcoholic I do not refer to the direct psychic effects of intoxication, but only to the special mentality of the alcoholic, which leads to the abuse after a manner more accidental or more chronic of alcoholic drinks, be this mentality due to a constitutional organization, to unfavorable influences of social environment, or to previous alcoholic intoxications.

The exposition that I have tried to make here of the general psychology of the alcoholic is based mainly on the facts given on this subject in the work of the Swedish medical committee, a work elaborated by Dr. Ivan Bratt.

In the chapter of the report, entitled "Chronic Alcoholism," Dr. Bratt quotes in the first place the opinions on chronic alcoholism of the Swedish physician, Dr. Huss, who was the first to make of it a monographic clinical description. According to Huss, chronic alcoholism is a chronic malady characterized by morbid symptoms without organic changes, developed under a chronic form in the nervous system of an individual who during a long time and continually has used brandy or



other alcoholic drinks in considerable quantity. Since the time of Huss his manner of viewing chronic alcoholism has become little by little the current opinion: he who abuses alcoholic drinks is considered by that fact itself to be suffering from a grave malady and should be subjected to a medical treatment that would bring about a cure.

After that Dr. Bratt gives a brief resumé of the description made by Kraepelin, a description which, being well known to all those who are interested in the alcoholic question, may be omitted here without any inconvenience. The author of the report makes the observation that Kraepelin gives no distinct definition of chronic alcoholism, but that certain expressions in the text of Kraepelin seem to show that he employs the term "chronic alcoholism" in two different significations. In the first case, he means by that term, it appears, "the psychic state which develops little by little in those who have the habit of taking a new dose of alcohol before the effects of the preceding one have disappeared." In another place of the same description Kraepelin says that "chronic alcoholism regularly produces lesions in the diverse organs of the body" whence follows that chronic alcoholism may also mean the continued abuse in itself of alcoholic drinks.

From the symptomatology given by Kraepelin it is evident that it refers to very advanced cases. From this one may draw the conclusion that according to Kraepelin the disease of chronic alcoholism should only be recognized as present in the cases where the abuse of alcoholic drinks has already produced very disastrous effects on the individual.

This argument implies also this: The majority of those who are permanent drinkers of alcohol and injurious to society cannot be considered as suffering from *alcoholismus chronicus*.

The information given by Kraepelin that in Germany the number of drinkers needing care in the inebriates asylums does not exceed 2 for 10,000 inhabitants seems to support the opinion given above. Hence that number being much less than that of individuals who abuse alcohol in a manner permanent and injurious to society and themselves, it seems that Kraepelin is of the opinion that the disease in question could only come in a late epoch, after a life of drunkenness.

There is therefore a contradiction between this interpretation of the symptomatology given by Kraepelin and the definition which he himself seems to accept, that is, he regards it as demonstrated by laboratory experiences, that after slightly increased doses (80 grammes a day) persistent effects (*dauerwirkungen*) supervene in a week. An individual subjecting himself to such persistent psychic effects undergoes, according to Kraepelin, a psychic change developing little by little and terminating after a time into the morbid entity of chronic alcoholism.

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In order to explain this lack of harmony between the symptomatology and the definition of the malady in question, one may suppose that the description which Kraepelin has made of symptoms relates to chronic alcoholics admitted to the hospital, while the definition of the malady is the result of laboratory experiences. "Hence, says the author of the report, it is in the intermediary domain of the alcoholics of the laboratory and the alcoholics of the hospital that the great majority of alcoholics live and move."

In continuing his criticism of Kraepelin's opinions the author of the report calls attention to the important fact that Kraepelin, although admitting himself that a very large number of chronic alcoholics (about 50 for 100) are abnormal individuals, does not even make an attempt in describing the symptomatology of chronic alcoholism to distinguish the characteristics due to alcohol from those which have an endogenous origin.

By this fault of method one is cut off not alone from the possibility of confirming whether and to what extent the particular psychic traits of the chronic alcoholic in an intoxicated state are related to alcohol or to the previous character of the individual, but also from the possibility of knowing whether on the whole the abuse of alcoholic drinks may cause persistent psychic effects and if so, of what nature.

The most serious objection made by the author of the report against the description of chronic alcoholism of Kraepelin and of other authors relates to the exposition that they have made concerning the most important and most characteristic symptom of that state, to-wit, the appetite for alcohol. He finds (note author of the report) that that appetite, although considered as the central fact of the alcoholic life, has never been the object of a very penetrating analysis.

Here is the analysis made of it by the author of the report, M. Bratt: The base of the appetite for alcohol that is found in advanced alcoholics is made up of certain painful sensations which manifest themselves, or at least accentuate themselves, when he is not under the immediate influence of alcohol. These sensations are caused by a certain physical state produced by alcoholic intoxication and constitute the basis of what may be called the alcoholic appetite. It is to prevent the disagreeable sensations from arising or to mitigate them that the alcoholic drinks. Nevertheless it is important for the question which occupies us that the disagreeable sensations disappear after an abstinence of some days, or at the most of some weeks. If they remain after that time, there is reason to suppose that they are not symptoms of alcoholic intoxication, but that they re-enter the large group of psychasthenic sensations of "constitutional degenerates."

If one wishes to characterize as a disease this abnormal state caused by alcohol and manifesting itself by sensations of great distress, etc., which may be removed by the alcohol itself, one may do so. But then it is a malady of the same nature as drunkenness itself, that is to say, an intoxication. However one may be justified in objecting against the identification of drunkenness and disease if one takes the point of view of general expediency. In all cases this morbid state disappears as a rule after some days of abstinence from the poison which has produced it. It will, therefore, not be exact to call it chronic alcoholism.

Nevertheless, one may object, even if the alcoholic has been freed from morbid symptoms he falls back more frequently and in a shorter time into his alcoholic habits. That is true, but what has not yet been observed is that it is not the same alcoholic appetite which manifests itself in him during a state of intoxication and which supposes a toxic organic modification inducing a change of cenesthesia. On the contrary, it is a necessity of purely psychologic origin which is the product of his habits of life and his ordinary surroundings, of that which tires him, of his lack of interests of a more elevated order, of his empty life which he can only fill up by going to hunt his stimulant in the cafe. There is still added to this the lack of effective motives (that is to say of motives that have the necessary force to influence his actions) to abstain from alcohol, and from all that which results in his relapse.

This distinction between physical appetite and the psychological necessity is of an importance that can not be too highly valued. Because if one may in general look upon the attempt to give to men motives sufficiently strong to conquer a desire which emanates from any kind of physical state as vain and impossible; one finds on the contrary that it will be much easier to find for them sufficient motives—among which should be considered the serious and severe reagents which may furnish future legislation—for combatting with success a necessity which is only of a psychological order.

The opinions of the Swedish Medical Committee on the most important point of alcoholic psychology, the appetite for alcohol, are here briefly resumed. I accept them for my part without reserve. During many years, I have seen in the Communal asylum of the city of Stockholm a very large number of cases of severe alcoholism of all shades; and the psychological observations that I have had the opportunity to make on them have persuaded me that the views here unfolded express the essence of the thing. I always have the habit of questioning the alcoholics sometime—after their entrance into the asylum, if they felt a desire, an appetite for alcohol, as for example the desire for tobacco after a time of abstinence. I recall only one who responded

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in the affirmative, and he was a man profoundly degenerated, with endogenous fluctuations, twilight states, impulses, etc.

Now in examining the scientific literature on the question under consideration one finds that everywhere a single means is proposed for treating alcoholic criminals, that is, the asylum for drinkers. In the laws of some countries this has already been introduced among the means of social defense. In the countries where it does not yet exist, it is praised with fervor. Those who believe in it say it will be a true panacea. Nevertheless, from the point of view I take, what hope is there for the so-called cure of drunkards from a confinement for a long period in the asylums for drinkers? The physical appetite for alcohol disappears in a few days in the majority of them, that is certain, and for the time that it exists the asylum for drinkers is useful. But for the rest of the time what service does the asylum render? The psychological necessity for alcohol which still persists cannot be subjected to a special medical treatment, even to a medical psychologic treatment; it belongs wholly to the domain of popular, or social psychology, if one wishes.

That which should be passed upon before all this psychological treatment of the necessity for alcohol, is the furnishing to the drinker of sufficient motives to abstain from alcohol. But it seems an *a priori* conclusion that one could find means less costly, less severe, and at the same time more effective than a confinement of long duration in an asylum for drinkers.

I do not at all wish to pretend that there will not be cases needing to be kept for a long time in a house of re-education, of work, i. e., an asylum for drinkers, but I claim that these are very serious cases, cases that have clearly demonstrated by their previous life their inability to live in society. But these cases are a minority and it is the mass of alcoholics that should chiefly concern us.

It is sufficiently interesting to note that the president of the Swedish Court of Appeals (Gota Hooratt), the baron A. Lyonhufoud in his capacity as president of the committee for the reform of laws on public assistance in a special report which appeared in 1837 proposed legislation which is based as far as the psychology of alcoholics is concerned on an opinion which greatly resembles those here unfolded. In this report Mr. Lyonhufoud expresses himself in the following manner:

Each time that a particular person is declared guilty of drunkenness that fact is noted in the register of the tribunal and a certificate confirming it is given to the municipal council of the community to which the individual condemned belongs. These certificates will be registered in alphabetical order, so that the pastor or the municipal

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council may, each for himself, give information in the certificates of change of dwelling and besides do their duty in that which regards the social condition of the individual condemned.

He, who for the fourth time has been declared guilty of infraction of the law on drunkenness, will have lost the right to decide for himself and his property and will consequently be placed by the Tribunal of Law under the guardianship of the municipal council unless a particular person will take charge of his guardianship. If the one who is thus condemned shows himself repentant and if he does not get drunk again for more than two years the tribunal may restore to him the rights of which he has been deprived in the manner stated above.

If the infraction has been aggravated, the special penalties stipulated should be applied.

If anyone is declared guilty of drunkenness for the fifth time, the tribunal of law decrees that the wife of the condemned, if there be one, has the right of divorce according to the conditions stipulated by the law, that the condemned one will no longer be considered as fit to depose in a court of justice and will be deprived of his civil rights, that the guilty one will be put under the surveillance of the municipal council in that which concerns the circumstances of his life; in the case of an amelioration, the stipulations of which the preceding paragraph speaks should also be applied to the extent that will be possible under the circumstances of which the present paragraph speaks.

"That one who shall be convicted of an ulterior infraction of drunkenness will be considered as incurable, and will be from then without rights before the law, consequently he could not be put under accusation, but he will be remitted to the decision of the municipal council, who will give assistance to that lost individual in an insane asylum or in a hospital or in a workhouse where are admitted the lazy and the vagabonds."

Social measures to take against alcoholics in general, measures which are systematized by M. Bratt and which are unfolded in the report of the Swedish committee, I will not deal with here, although they are of very great importance for the entire alcoholic question. Those who are interested in new ideas and who ask the question under an aspect wholly original, I exhort to take cognizance of Bratt's system as it is unfolded in the report, *Alkohol och samhället*.

Where it concerns the criminalistic side of the alcoholic question, it remains for us to view the social treatment that should be chosen against the criminals whose crimes show evident connection with acute or chronic alcoholic intoxication. For finding the rational treatment it seems necessary to keep in view the object of the social reaction of criminal policy and of the general psychology of the alcoholic.

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Now, for a rational penal system the object of the reaction of criminal policy can be only the dangerous state presented by the criminal in regard to society. I will not enter into a discussion of the question, i. e., whether it is preferable for society to react against all dangerous states of any importance, as soon as that state is ascertained to exist in an individual and before the dangerous state even manifests itself by delinquent or criminal acts. Here I admit the second principle: that all reaction of criminal policy against a particular person assumes that he has manifested a dangerous state by an act incriminating before the law.

Now a dangerous state in a criminal alcoholic has this peculiarity which distinguishes it from the dangerous state of all other criminals: namely, it may be provoked at all times by an act of will of the individual, that is to say, that of intoxicating himself with alcohol. This distinction between the alcoholic criminal and all other criminals is, it seems to me, of an importance so great that it would be neglecting what should be the primordial tendency of all criminal policies, to-wit, to seek chiefly the causal means of social defense, if one neglects this distinction in seeking the proper reactions against alcoholic criminals. This manner of looking at the question, although it has not yet taken shape in any penal code to my knowledge, nor exercised any influence on the new projects of penal law that have been elaborated during the last years, is nevertheless completely in accord with the principles on which is based the modern movement of criminology. It is true that in the penal code of Austria there is a stipulation according to which the person who has committed a crime in a state of "complete drunkenness" (*volle Berauschung*) is considered as "irresponsible." Therefore he is not punished for the crime that he has committed in that state. Drunkenness alone is punished as an infraction of law by a penalty of a three, exceptionally a six, months' imprisonment. This penalty has a character distinctly repressive against future drunkenness, but it has no other preventive character than that which appertains to all fixed punishments against a determined delinquency, since the sentence has not fixed any optional and aggravated punishment for repeated drunkenness.

If one admits the principles here unfolded concerning the object, which should have in view a rational reaction of criminal policy against the criminal alcoholic, it is evident that this reaction should comprise two distinct factors: it should be directed first against the dangerous state actually manifested by the overt incriminating act; second, against the potential dangerous state which may supervene in the future if the individual after having submitted to his punishment, puts himself again in a state of alcoholic intoxication. It goes without saying that the

penalty intended for the potential future dangerous state should be of a serious nature, and that it should be still more aggravated in cases of relapses into intoxication. This implies then that drunkenness in a recidivant criminal alcoholic should be treated with much more rigor than that in an individual who has never committed a criminal act. It should not be said that that principle should be rejected as opposed to the principle of equality before the law, because the dangerous state presented by the drunkenness of an individual who has never committed crime under the influence of alcohol cannot be the equal of that which is presented by the drunkenness of an individual who has already committed a criminal act in a state of drunkenness. Besides, drunkenness represents many different degrees of the dangerous state and to these different states should correspond different penalties. If gradations of penalties are necessary it is to the gradations of these dangerous states that they should be adapted.

The second principle that must be considered in seeking a rational social treatment for alcoholic criminals is the general psychology of alcoholics.

It being conceded that that which in the majority of cases leads to a relapse is not an irresistible physical appetite but merely a psychic craving for alcohol, and it being also conceded that in order to prevent a relapse it is necessary to build up sufficiently strong motives against it and that these are generally wanting in the present state of society, it is necessary first to inquire into the nature of these motives. As we have seen before, the alcoholic should not and cannot generally be considered as suffering from a disease. A treatment in any sort medical will therefore not be indicated. On the contrary, the treatment should be based on the opinion that the alcoholic is a man who in the majority of cases can abstain from ethylic drinks if you only give him sufficient motives. When it concerns a criminal alcoholic these motives need scarcely be sought elsewhere than among the means which society already has at its disposal to react against criminality in general, to-wit: Payment for damages, privation of rights, fines, penalties against liberty, to last a definite time, or more or less indefinite, etc.

I will try now to sketch a system of reactions of criminal policies against criminals whose crimes have been committed under the influence of acute or chronic ethylic intoxication. I want especially to observe that this system does not claim to be so adapted to present political or social circumstances that it could be put into actual practice at the present time. On the contrary, I know very well that such realization is not at present possible. But I believe that it is always useful to form a clear idea of the rational principles which it is desirable to realize

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before commencing the work of introducing these principles in legislation, because that work entails always a certain deference to principles less rational but founded on deep-rooted opinions of the people, opinions which, though erroneous, nevertheless in lands of constitutional parliaments leave their imprint on legislative work.

In following always the division of the matter that we have made in the first part of this memoir we have here to discuss the system of treatment of three different groups of alcoholic criminals.

a. Those who without being chronic alcoholics have committed their crime under the influence of an acute ethylic intoxication.

b. The chronic criminal alcoholic whose crime is connected with a state of intoxication.

c. Those who have committed their crimes under the influence of a psychosis of alcoholic origin.

*Acute Alcoholic Criminals.*—The distinguishing characteristic of this group is the crimogenic role played by accidental drunkenness. Among the cases considered here two different groups should be distinguished, the classification being made according to the degree of danger to society.

This distinction should be made not only according to the gravity of the criminal act but also and chiefly by a minute examination and recording of the personality of the criminal. This examination made in the course of inquiry will permit a decision as to whether a given case is one of "acute" accidental criminality (*Gelegenheits Verbrechen*) or if there are inherent criminal tendencies of the individual, or whether the individual is one whose mentality as revealed by his antecedents and by direct examination, is of an antisocial and dangerous nature.

First. The individual belonging to the first of these two groups, the criminal acute or accidental, should be subjected to a progressive treatment as follows:

a. As result of the crime committed they should be condemned to the punishment ordinarily stipulated for the crime in question: punishment by fine or with loss of freedom with or without reprieve, besides that the sentence should pronounce a serious optional punishment against repeated drunkenness.

b. In case of repeated drunkenness the optional punishment contained in the previous sentence should be executed and at the same time the tribunal should pronounce a new sentence, which fixes a new punishment, optional and more severe against repeated drunkenness (or perhaps rather against the use of alcoholic drinks).

c. In case of renewed relapses the procedure should be repeated, but after numerous relapses, which then prove that the individual seems



to be developing towards chronic alcoholism, recourse should be had to the means which are reserved for the chronic alcoholics, that is to say, confinement in a workhouse, a confinement which should be of a duration relatively indeterminate and which should be combined with conditional liberation.

Second. The dangerous criminals—The criminals of this category should be treated by punishments of a duration relatively indeterminate and having a maximum term. The system naturally implies conditional liberation, a period of trial, and surveillance. After his definite liberation the criminal should be subjected to the same rules and optional punishments in case of relapse into drunkenness as acute or accidental criminals.

In case of relapses into crime committed under the influences of alcohol, every criminal should be treated as dangerous.

*Chronic Alcoholic Criminals.*—In this category it is also advisable to distinguish between those who are acute accidental criminals and those who are dangerous or chronic criminals.

First. Accidental criminals—For individuals belonging to this group the reactions of the criminal policy should vary according to the nature of the punishment which follows the crime committed.

a. If the punishment is a fine or a privation of liberty of very short duration it should be followed by the immediate confinement in the workhouse, because with those chronic alcoholics who are still under the direct influence of intoxication one must reckon with the persistence of the physical appetite of alcohol against which the menace of an optional punishment is scarcely effective.

b. If on the contrary the stipulated punishment against the crime committed is a privation of liberty of a very considerable duration (more than a month for example) the same rules which are indicated above for accidental criminals whose crime is in relation with an acute drunkenness should be applied, with this exception, that the optional punishment should be inflicted, not alone against drunkenness, but against the use even of alcoholic drinks, and that the confinement in a workhouse should follow the second relapse.

Second. Chronic alcoholics who are habitual or dangerous criminals should be subjected to the same treatment as dangerous criminals whose crime has been committed under the influence of an acute drunkenness.

In principle the penal sanction and the reaction of the criminal policy should be the same for:

- 1st. Criminals who are chronic alcoholics.
- 2nd. Habitual criminals who are not alcoholic.

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### 3d. Vagabonds.

From the criminalistic point of view all these individuals form only a single large group and the presence of alcoholism in these individuals has only a limited importance for the criminal policy.

Evidently a treatment of criminal alcoholics so rigorous and severe as that which I have sketched above, presupposes profound modifications of current opinions on drunkenness and its importance, not alone in the people but also in the magistrate, the jurors of the tribunal, the legislators, etc. The erroneous opinion that drunkenness is an extenuating circumstance, must disappear entirely at least with those who have to judge the evil deeds of alcoholics. As long as there are jurors who regard the drunkenness of a chronic drinker who kills his wife by a kick as an extenuating circumstance of such a nature that the author of such an atrocious crime can get off with a punishment of three years in prison (sic)—this happened in a French tribunal some months ago—it will be impossible to modify the manner of judging drunkards and their dangerous and demoralizing influences as they exist at present among the people.

Criminals whose crimes have been engendered by a psychosis of alcoholic origin.

That which necessitates the law should provide a special treatment for criminals who at the moment of the commission of their crime are under the influence of an alcoholic psychosis, is first the toxic origin of these psychoses; because the criminal himself may, by the voluntary act of drinking alcohol, provoke relapses of the malady; and because, as it is characteristic of many of these psychoses to be of very short duration, the symptoms may have often disappeared before the verdict is given, in other cases even before the end of the inquiry and in cases of pathological drunkenness even before the commencement of the inquiry. On account of these two characteristics of alcoholic psychoses, it follows that the reactions of criminal policy should:

First—Direct themselves against the relapses indirectly voluntary of the malady;

Second—Prevent the tendencies of preventive legal measures, which should be the essential in all reactions of criminal policy, from being destroyed by the fact that the individuals having committed grave crimes are set at liberty immediately after the judgment without any measure of social defence being taken against them. For the realization of these two objects of social reaction it is necessary, I believe, that the law should provide different measures according as the duration of the psychosis is very short or very long.

a. Alcoholic psychoses of very short duration.—To this category

belong the pathologic drunkenness, the acute deliriums (delirium tremens) and some cases of the hallucinations of Wernicke. For cases of pathologic drunkenness and of acute delirium it can with certainty be foreseen that the symptoms will disappear before or a short time after the judgment.

If the inquiry lags a little one can say the same thing for many cases of hallucinosis. As to all these cases the actual existing procedure which consists in the tribunal declaring that the accused, having been in a state of dementia at the moment of the act, cannot be subjected to the punishment stipulated by the law, without taking any measure of social safeguard against the criminal, is not only silly but directly harmful.

For realizing the two above named effects of all social measures against these criminals there should first be a legal stipulation of such nature that the criminals who have committed grave crimes shall be officially placed in an insane asylum for continued observation or confined in a workhouse. After the sentence against the criminal has been pronounced, there should continue a prohibition against the usage of alcoholic drinks and an optional punishment by imprisonment in a workhouse in a case where the criminal disregards the prohibition.

b. Alcoholic psychoses of a longer duration.—In these cases the sentence should ordain official detention in a hospital for the insane until a cure, and should contain besides the same stipulations as to the usage of alcoholic drinks provided for cases of alcoholic psychoses of short duration.

The brief exposé of the principles which should be adopted for the social treatment of criminals whose crimes show causal relations with acute or chronic ethylic intoxication, principles which are based on the conception of the general psychology of the alcoholic, should only be considered as an attempt to introduce in the discussion of these questions of very great importance, some elements which have until now lacked the proper consideration in this connection. Thus it is necessary, it seems to me, to draw attention to the fundamental fact that the alcoholic in general—I do not speak of exceptions—cannot be considered as a person suffering from disease from the psychologic point of view, although he may very well be so considered from the somatic point of view (hepatic, nephritic, neurotic). Another fundamental fact which should necessarily be considered if one wishes to arrive at a rational legislation against alcoholic criminality, is that the dangerous state of the alcoholic criminal may be brought about by his own voluntary act.

Finally, it is impossible to provide effective measures of criminal

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policy against any sort of crime without considering the divers forms which it may assume, since without that it is impossible to apply one of the most important means for social reaction against crime—to-wit, individualization.

## JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE.

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### ACCOMPLICES.

*Farley, State Excise Com'r, v. Bronx Bath and Hotel Co. et. al.*, 148 N. Y. Supp. 579. Special agents, who are confidential agents of the State Excise Commissioner and are required under Liquor Tax Law (Laws 1896, c. 112), Sec. 10, to investigate at his direction and to ascertain whether the law is being violated, are not accomplices, where, for the purpose of obtaining evidence, they purchased liquor on Sunday contrary to law, and so their testimony need not be corroborated. Dowling, J., dissenting.

### CORPORATIONS.

*Joplin Mercantile Co. v. United States*, 213 Fed. 926. *Criminal liability for a felony.* A corporation may be indicted and convicted under Criminal Code, Sec. 37, for a conspiracy to commit an offense against the United States by carrying liquors into Indian Territory or introducing liquors into the Indian country, although under section 335 of the Criminal Code the offense is a felony.

### EVIDENCE.

*People v. Duffy*, 105 N. E. 839, N. Y. *Admissibility of evidence of other crimes.* In a prosecution for accepting bribes for police protection, where the only direct evidence of the payment of the money was given by the one who paid it, he was an accomplice, and hence his testimony may be corroborated by evidence showing a regular system of payments to accused and his predecessor by the proprietors of illegal resorts, for police protection. Collin, J., dissenting.

### EXTRADITION.

*Ex parte Thaw*, 214 Fed. 423. *Sufficiency of papers.* In order to have extradition there must be a person, a crime, and a flight, and, under a reasonable and a necessary construction of the constitutional provision, the person must be a responsible person: but naming the person who is charged will be supplemented by the presumption of responsibility and will be sufficient to establish the constitutional elements, unless the description of the person and the crime for which he is sought to be extradited involves something which reasonably overthrows the essential presumption of responsibility.

When the crime alleged in the papers as the ground for extradition is a conspiracy by the person charged and others for his escape from a custody based only upon a finding of his insanity and a commitment thereon, such a finding not only overthrows the presumption of responsibility but creates the presumption that insanity continued until the escape, and this throws the question of criminal responsibility into the field of uncertainty, and the burden of proving a recovery or a lucid interval, as the case may be, rests upon the person alleging the same.

### GRAND JURY.

*State v. Toth*, 90 Atl. 1125, N. J. *As affected by legality of title of officer selecting it.* The legality of a grand jury does not depend at all upon

## JUDICIAL DECISIONS

the validity or invalidity of the title of the officer by whom such body is selected or drawn. If the title of such officer is colorable, indictments found by a grand jury selected or drawn by him are as impregnable against attack as if its members had been selected or drawn by an officer whose title is unimpeachable.

### INDICTMENT.

*People v. Jones*, 105 N. E. 744, Ill. *Sufficiency*. An indictment which alleges that accused attempted to break and enter in the night time the dwelling house of a female named with intent violently and against her will to ravish her is not sufficient to sustain a judgment of guilty: force being an essential element of the rape, and the words "violently" and "forcibly" not being synonymous.

### INDICTMENT AND INFORMATION.

*State v. Myer*, Mo., 168 S. W. 717. *Name of injured party*. A statute provided that every person who should wilfully set fire to any shop or other building not a subject of arson in the first degree, but adjoining any inhabited dwelling house so that such dwelling house should be in danger, should be guilty of arson in the second degree. An information charged that the defendant did set fire to a store room "adjoining to a certain dwelling house of one E. M. Deming," whereby the dwelling house was endangered. After conviction the defendant contended that the information was fatally defective because it did not identify the owner of the store room. The Supreme Court of Missouri had previously held that in charging with arson in the first degree the ownership of the house must be alleged. Held, that in prosecutions under the above statute, such allegation was not necessary, as the gist of the offense consists in the danger to the persons occupying the adjoining building rather than the injury to the building set on fire. In actions at common law a trespass to the property was essential and the indictment must show that the defendant was not in possession, which was done by alleging ownership in another.

### JURISDICTION.

*People v. Arnstein*, 105 N. E. 814, N. Y. *Locality of offense*. An indictment, which alleged that defendants, including A, entered into a conspiracy in the county of New York to fraudulently deal in copper stocks to obtain by false pretenses the property of persons to whom they should sell stocks, that in pursuance of the conspiracy defendants went to Massachusetts with intent to cheat and defraud the prosecutor, that they there made to him false representations, and in furtherance of the conspiracy three of the defendants, not including A, sent telegrams and letters to prosecutor from the city of New York confirming the false representations, and that subsequently in the state of Connecticut, defendants obtained from prosecutor, who relied on the false representations, a specified sum, is not maintainable against A, under Penal Law, sec. 1930, subdiv. 1, declaring that a person who commits within the state any crime in whole or in part is liable to punishment in this state. Willard Bartlett, C. J., and Hiscock and Miller, JJ., dissenting.

### OBSCENITY.

*People v. Tylkoff*, 105 N. E. 835, N. Y. "*Commits an act*." Penal Law, sec. 43, declaring that any person who wilfully and wrongfully "commits" any act which openly outrages public decency, or for which no other punishment is

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provided, is guilty of a misdemeanor, applies only to acts, and the utterance, before a large number, of slanderous words charging a female with unchastity is not a violation, particularly as such slanderous words do not constitute a crime. Hiscock and Hogan, JJ., dissenting.

### PAROLE.

*Ex parte Marcil*, 213 Fed. 990. *Commutation for good behavior subsequent to breach of parole.* Under act of June 25, 1910, C. 387, sec. 6, providing that where a prisoner breaks his parole he shall serve the remainder of the sentence imposed upon him, a prisoner is not entitled to commutation for good behavior under the commutation law (Act of June 21, 1902) as amended April 27, 1906, during his confinement after being returned to prison for the breach of his parole.

### PEONAGE.

*United States v. Broughton*, 213 Fed. 345. Code Ala. 1907, sec. 7632, provides that when a fine is assessed the court may allow defendant to confess judgment with good and sufficient sureties, and sec. 6846 declares that when this is done a convict may contract to render services for the surety in payment of the fine and costs, and if he does so, and refuses without sufficient excuse to perform the services, he must on conviction be fined not less than the amount of the damages which the party contracting with him has suffered by reason of his failure, or refusal, etc. Held, that sec. 6846, having been sustained by the highest state courts, was not in violation of Const. U. S. Amend. 13, prohibiting slavery or involuntary servitude except as a punishment for crime, the execution of the surety labor contract not operating to relieve the convict of his status as a prisoner, liable to perform the judgment for fine and costs, but merely to transfer his custody and services from the state to the surety; and hence his service for the latter does not constitute peonage.

### PRINCIPAL AND AGENT.

*Boos v. State*, 105 N. E. 117, Ind. *Illegal sale of intoxicating liquor to a minor by an agent.* Under Burns Stat. 1914, sec. 2486, punishing, "whoever directly or indirectly" sells intoxicating liquor to minors, a licensed saloon keeper is not criminally liable for a sale made by a bartender to a minor, where the sale was made in the saloon keeper's absence, or without his knowledge, express or implied, or without any design to evade the statute.

### SENTENCE.

*Dutton v. State*, 91 Atl. 417, Md. *Formalities in pronouncing.* It is not reversible error, even in a capital case, not to ask the prisoner if he has any reason why sentence should not be passed, unless it appears that he was or may have been injured by the omission, but the practice of inquiring any reason why sentence should not be passed is recommended in all cases in which either the death penalty or confinement in the penitentiary can be imposed.

### SUSPENSION OF SENTENCE.

*Belden v. Hugo*, 91 Atl. 369, Conn. *Effect of revocation.* Under Pub. Acts 1905, c. 142, sec. 4, as amended by Pub. Acts 1911, c. 106, sec. 1, relative to the suspension of sentence, and Pub. Acts 1905, c. 142, sec. 5, relative to the revocation of such suspension, where sentence is suspended after being pronounced, the period during which a convicted person is in the custody of the probation officer is not a part of the term of his sentence, and, where the

## JUDICIAL DECISIONS

suspension is revoked, the term of the sentence runs from the time of such revocation and not from the time of the commitment to the probation officer. Beach and Roraback, JJ., dissenting.

### TRIAL.

*Peterson v. United States*, 213 Fed. 920. *Coercing verdict.* On a trial for receiving stolen cattle, where the jury retired on Friday afternoon, and after being out until 11 o'clock Saturday morning, reported that they had agreed as to one defendant but were unable to agree as to the other two defendants, it was error for the court after inquiring and ascertaining that the jury stood 7 to 5, to charge that the case should be finally disposed of as to all the defendants, that it was the second trial of the case, and that there was no reason to believe that a more intelligent or honest jury more likely to arrive at a verdict could be drawn on another trial, that justice demanded that the case be brought to an end, that the expense of the trials was very great, that the government had a right to a verdict without a further expenditure of time and money, and defendants, if guilty, a right to have that fact determined before they were bankrupt, and, if innocent, a right to be acquitted before their means were exhausted, that, if seven jurors were for an acquittal, the others should seriously inquire whether there were a reasonable doubt, and, if the seven were for conviction, whether there was a reasonable doubt, and that they should further consider the case; the court believing that they could honestly come to an agreement, especially where, in less than an hour, they returned a verdict acquitting one defendant and convicting the other.

*State v. Schneiders*, Mo. 168 S. W. 605. *Improper Argument.* A large part of the prosecuting attorney's argument consisted in denouncing the defendant as a perjurer, a suborner of perjury and a crook. There was no proof in the record that any of these charges were true. Objection was made to the argument but the trial court failed to rule upon the objections or to rebuke the prosecuting attorney. On appeal it was urged that this was error without prejudice as the defendant was very probably guilty. Held that the defendant was guaranteed by the constitution a fair and impartial trial according to the law of the land, whether innocent or guilty. The defendant did not have such a trial and hence was entitled to a reversal.

*Reed v. State*, Tex. Cr. App., 168 S. W. 541. *Instructions to jury panel.* The Texas statute requires that in all prosecutions for felony the court shall give his charge in writing, directly setting forth the law in the case. When the jury panel which was to try all cases for the week was tested as to qualifications, and sworn, the trial judge gave them oral instructions as to the general duties of jurors, including one upon the importance of agreement to prevent a mistrial. The defendant was apparently not in court but his attorney objected. Seven of the jurors who were thus instructed subsequently sat in the trial of the defendant. At the close of that trial the judge instructed the jury in writing as to the law applicable to that case. Held that the oral instructions given by the court were not a charge in that case; that the defendant was not entitled to a hung jury as a matter of law; and that if any juror had been improperly influenced by the oral instructions the defendant could have ascertained the fact on the *voir dire* and challenged the juror. The conviction was affirmed.



## NOTES ON CURRENT AND RECENT EVENTS.

### ANTHROPOLOGY — PSYCHOLOGY — LEGAL-MEDICINE.

**Criminal Anthropology in Belgium.**—Some months ago the State Department sent in its official mail a letter signed by Arthur MacDonald, the criminologist, to the leading nations of the world. The purpose of this letter was to secure international uniformity in methods of studying criminal, pauper and defective classes, to compare results of different nations and increase co-operation between nations in the detection and prevention of crime.

One of the first nations to reply to this letter is Belgium, whence came the following letter addressed to Mr. Arthur MacDonald, Washington, D. C.:

#### MINISTRY OF JUSTICE.

Brussels, Aug. 7th, 1914.

Sir: I have read with great interest the brochure which you sent me entitled "Study of Man," where you recommend the establishment of a laboratory to study criminal and abnormal classes under government control. In this important brochure you touch upon questions of undeniable social interest, and the solution which you recommend merits the careful examination of competent authorities.

I am pleased to inform you that your plan of systematic study is carried out to a certain extent in Belgium. We have established at the Forest Prison in Brussels a laboratory of penitentiary anthropology where are recorded and coordinated results of anthropological research from the point of view of the penitentiary upon the prisoners of this and the contiguous prison St. Gillas. In the organization of the laboratory is the chief, Dr. Vervaeck, who studies the normal and pathological constitution of the delinquent and in general all questions relating to criminology in Belgium. He has a complete instrumental equipment for a thorough examination of the prisoners, especially the examination of the nervous system, including a photographic apparatus for purposes of identification and which he can use for certain abnormal cases.

The laboratory has a library of about two hundred volumes on criminal anthropology, psychiatry, penitentiary science and general anthropology, including also an important number of current periodicals. The personnel, besides the medical director, consists of an assistant physician and two clerks.

Without doubt there remains much to be done in order to carry out the extensive plan which you have outlined in your brochure. It is a question of time and money. But you will see that it is not indifferent to the success of your ideas that a Government has recognized in principle the utility of anthropological studies upon criminals conducted under official patronage.

I have the honor, sir, to assure you of my highest consideration.

(Signed)

H. CARTON DE WIART, The Minister of Justice.

**The Claim of Unconsciousness in Tort and Murder Cases.**—It is possible for a person to perform apparently purposeful movements and retain thereof no memory. The usual cause for this peculiar psychic state is either a severe blow upon the head, alcohol or some other drug, epilepsy, sleep (somnambulism) or insanity. In tort and murder cases the claim of this variety of unconscious-

## UNCONSCIOUSNESS IN MURDER CASES

ness is a matter of everyday occurrence, apart from any of the usual causes. At least five hundred such claims have come under the writer's notice.

Dr. Dercum said that in a very large number of criminals he has examined, this claim of loss of memory has been a very common subterfuge. The fact is that those who really are insane never make such a claim. This is a point of great importance. The prisoner will very frequently remember everything in his previous life up to the time of the murder or other crime; then he claims to forget all about the occurrence in question and the lapse of memory is claimed for a variable period of time subsequently. He will commonly adhere to this position tenaciously.

Dr. J. W. Putnam regarded the question of unconsciousness during time of trial as well recognized, but the unconsciousness that exists after crime and after a person is arrested has recently been brought to his attention by a case in the Erie county jail. There was a prisoner there caught as a burglar who had done very successful work, was arrested and then lapsed into a state of unconsciousness, which he persisted in for 16 days, and during that time he lay an inert mass without any attempt at voluntary motion. He contradicted a good many of the classic statements concerning hysteria, namely that a paralyzed arm, if held over the face, would fall to the side and not strike the face. The arm would invariably fall striking his face. The vomiting would gush so that the vomit would fall back into the face. The contents of bladder and rectum were voided into his clothing so that he contradicted all statements. The reflexes were all normal. Faradism caused contraction of all muscles. He made no voluntary effort of any kind. No opportunity was given to see his pupils. He was fed regularly and at the end of 16 days he gave up the contest. After he came to, and asked for his food, he was questioned as to how he was able to endure the various tests. He said that the electric test and pinpricks were not so hard to bear because the pain in his stomach for want of food was so much greater. The sticking of pins into him he did not mind at all, although he felt them. When asked why he went so long without food, he stated he had read in the newspapers of a woman in London who got out of jail because she refused food and he thought maybe he would be able to do likewise.

Dr. D. J. McCarthy thought it is proper to be skeptical about statements of amnesia. Amnesia without damage to the brain may occur. A boy 14 or 15 years of age, whom he knew, attacked his father and choked him to death. There was no criminal prosecution against the boy, it being reported that he was totally unconscious and knew nothing about the attack. This boy four or five years later developed epilepsy. In court the experts often go too far. They may not know whether the prisoner remembers events occurring during the period of amnesia or not.

Dr. Potts said some years ago a very interesting case came under his observation, in which, however, the question of criminal prosecution did not enter. A man who had been an epileptic for years, was taken off a train outside of Philadelphia, after he had had an epileptic convulsion and was taken to the University Hospital, from which he was later removed to the psychopathic ward of the Philadelphia Hospital. When admitted he had a number of interesting mental symptoms, but the interesting point in this connection is that for several days he assisted about the wards, performed normal and logical actions, after which he one day inquired where he was and

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apparently had no recollection of anything that had occurred after being seized with the convulsion on the train. He was an educated man, a graduate of the University of Michigan, and had no reason to malingering. In fact he was only too anxious to leave the hospital when he discovered where he was. A full report of the case will be found in the Philadelphia General Hospital Reports, 1908, Vol. VII, p. 97.

Dr. Knapp thought that Dr. McCarthy has indicated the essential point that we can never absolutely disprove these amnesias in the criminal. Dr. Knapp is very skeptical about accepting such amnesias when reported, but there is certainly a possibility that the mental shock of realizing that the crime has been committed may cause a period of amnesia. In one case which Dr. Walton has mentioned and which Dr. Knapp examined for the defense, he came to the conclusion that the man was not insane, but on the day he committed the deed he had taken considerable alcohol, and he may have had alcoholic amnesia. It seems to Dr. Knapp perfectly possible, especially in traumatic cases, that there may be a certain amount of amnesia. If the patients do not absolutely lose consciousness they become dazed, faint and have a very slight memory of what occurred. He recalled a case where a lady was thrown from a horse and broke her skull. He was called to see her shortly after the accident. At that time she was in a dazed and confused state, and did not respond to questions asked her. A day or two after he had seen her, her attending physician, who was very competent, said her mentality had cleared quite well. Dr. Knapp saw her again, when she complained of practically nothing but a little headache, and felt a little weak. Although in bed she felt all right. She was laughing, talking; wanting to get up. She said she did not remember Dr. Knapp's first visit, but she talked in a perfectly natural manner. Some time afterwards Dr. Knapp was talking with her physician, who told him that she had got entirely well, and had remained well ever since, except that there was some loss of smell, but she had absolutely no recollection of ever having seen Dr. Knapp. She was perfectly clear at the time she did see him, and was alert. This is a case Dr. Walton probably would look upon with great skepticism, but there was absolutely no reason for believing that there was any incorrectness in her statement.

Dr. Fisher said we have to consider the question of a motive in all these cases. Epilepsy should not be held as an excuse if between the times of attacks the mentality is normal. If an epileptic commits an act, with a motive, little weight should be given to the fact that he is an epileptic.

Dr. Walton, in closing, said he quite agreed with Dr. McCarthy that amnesia is possible in legal, as well as in extra legal practice. Nor should we hesitate to allow it in a given case simply because the genuine cases are in the minority. We should always remember, however, that we are only giving an opinion, not stating facts, just as we are only giving an opinion when we express skepticism regarding other cases.

G. L. WALTON, M. D.,

In *Journal of Nervous and Mental Disease*, Sept. 1914, 581-583.

**The First Meeting of the Italian Society of Anthropology, Sociology, and Criminal Law.**—In *La Scuola Positiva* for May, 1914, the first article is by Enrico Ferri. In it, he reviews the first meeting of the Italian Society of Anthropology, Sociology, and Criminal Law.

He broached the idea in conjunction with the teachers in the School of

## TAMBURINI ON INDIVIDUAL LIBERTY

Applied Juridical and Criminal Sciences, in May, 1913. The work of this new society is in line with the work of the International Union of Penal Law, and its object is to collect, co-ordinate, and reinforce the work of those of positive school tendencies in the study of the problems of criminality and of penal justice. The most distinguished magistrates, biologists, and psychiatrists of Italy, professors of criminal law, lawyers, wardens of penitentiaries and asylums,—in short, over two hundred students of the subject responded to the appeal to take part in the first meeting. The highest officials of the government, presidents of medico-legal societies, and representatives of bar associations, and of judges' associations also accepted the invitation. Professor Gilmore of the University of Wisconsin went from America to represent the American Institute of Criminal Law and Criminology. The persons present represented theory and practice, which is a characteristic of the new society, that has for its object the study of criminality as a social and natural phenomenon, and an object of juridical theory and legislative rule, of judicial and administrative provisions.

The International Union of Penal Law, as its founders, Prinz, Von Hamel, and Von Liszt, acknowledge in their letters of adherence to this congress, derives its initiation from the positive criminal school. And so it happens that we have now in Europe and in America an atmosphere decidedly favorable to our ideas which thirty years ago seemed not to be susceptible to practical application and refractory to juridical systematization. The Italian society comes in good time to supplement the work of the International Union in a gradual but progressive realization of its theoretical and practical conclusions in the reform of every branch of penal justice, from the technical functions of the judicial police to the fundamental principles of the penal code, from the judicial arrangement to procedural forms and prison management.

The congress was noted for two characteristics: the first, the application of the data of criminology to the penal and criminal procedure laws; the second, the affirmation of the biologic value of certain somatic characters which are found in criminals and of which very recent pathology, with the assistance of biologic chemistry and the studies on internal intoxications, gives not only the genetic explanation but also, and above all, the causal value, in relation to the abnormal volition of the criminal.

R. F.

**Prof. Tamburini on Individual Liberty and Insane Asylums.**—In *La Scuola Positiva* for May, 1914, the first installment of the report of Augusto Tamburini, professor of psychiatry in the Royal University in Rome, is given, the subject being "The Guarantees of the Individual and of the Family in Indeterminate Segregation within Prison Institutions and Hospitals for the Criminal Insane, and in Insane Asylums."

1. *Insane Asylums.* Great care should be taken that individual liberty is not taken away lightly. First, an order of the magistrate for provisional commitment should be necessary. Then a sentence of a higher court upon motion of the attorney-general, should authorize the admission of the subject to the asylum, where he must remain for an indeterminate time, that is, until the superintendent shall ask the higher court to order his release. But it is necessary that a medical certificate given by an expert in psychiatry be presented to the magistrate. This certificate should supply information upon two points: the mental alienation of the subject and his dangerousness. In addition to the medical certificate it should be necessary to have affidavits

## CHINESE CRIMINAL CODE

from witnesses who depose as to the specific facts which show the dangerousness of the individual. There should also be in the hospitals an observation ward.

*Treatment.* Treatment should be humane, and whipping be absolutely prohibited.

*Discharge.* The law should prescribe three (3) modes of discharge. (a) *Discharge after cure.* Discharge should not take place except upon the order of the chief judge upon the request of the superintendent of the asylum or of the family. (b). *Discharge after improvement.* When the patient has improved to such an extent that it is no longer necessary for him to remain in the hospital but may receive treatment at home, the superintendent may give him over to his family and advise the attorney-general of his action. (c). *Discharge made under false pretenses.* There is, finally, the case in which the family wishes directly to assume the care and custody of the patient and requests that he be given to them, even though the superintendent does not believe that he is in condition to be released. In this case, because the patient may be induced, for instance, to sign deeds, it is provided that the discharge be allowed only by the higher court, after the attorney-general has been heard.

For the discharged indigent insane, there should be aid and employment societies.

One of the great guarantees for families and for society should be supervision of these hospitals which should be exercised by means of inspections made by those technically competent. These inspections should control not only the hygienic and technical conditions of the institution but also all that pertains to the treatment of the patient.

It will be seen that in order that all these provisions be executed, the superintendent must have conscience and science.

R. F.

## COURTS—LAWS.

**The New Chinese Criminal Code.**—A brief description of the new Chinese Criminal Code which went into effect March 30, 1912, is contributed by Dr. Josef Kohler to the *Archiv für Strafrecht*, Band 61, Heft 1, under the title, "*Altes und neues chinesisches Strafgesetzbuch.*" The new code, says Dr. Kohler, shows the influence of the newer Japanese law and of German legal ideas as well, but alongside many modern provisions persists much of the old Chinese criminal law which had prevailed for such a long period of time. The old family or clan jurisdiction is largely altered and in the case of the more serious crimes the family is no longer punished for the offense of the member as was the case in the old Chinese law. The methods of punishment are modern. The peculiar death penalty called cutting into a thousand pieces is naturally discarded and of the two normal methods of execution of the old law, strangling and beheading, strangling is retained as being the lighter. Exile, so frequently employed in the old law, has been largely superseded by imprisonment, formerly practically unknown. Corporal punishment also is discarded and money fines are now much in use. The principles of conditional liberation and suspension of sentence with a term of probation have been recognized by the code. The modern system of probation takes on a special Chinese character by making the family responsible for the released prisoner.

Peculiarly Chinese is the importance accorded to the confession which not only mitigates guilt but may even save from punishment altogether. This is a

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fundamental idea in the old law and was incorporated into it from the teachings of Confucius. Likewise the failure to show respect for parents and paternal ancestors is especially punishable. This of course is in accord with the ideas which go back even beyond the time of Confucius. Entirely Chinese is the constituting assistance or instigation to suicide a crime. Very severe penalties are provided with reference to the opium traffic. While retaining so much of the old ideas as not to constitute too radical a change, it is yet remarkable how many of the modern western ideas have been assimilated. E. L.

**Law Sociology and Law Practice Classes.**—The training of the lawyer so that he may best fulfil his obligation of service to his clients and to the public is the subject of an open letter addressed by R. S. Gray, instructor in practice at the Y. M. C. A. Law School, San Francisco, to Jesse W. Lilienthal, president of the Bar Association of San Francisco, and Beverly L. Hodghead, president of the Commonwealth Club of California, in which Mr. Gray advocates the establishment of a class for the study of "Law Sociology" under the auspices of the Bar Association, with the co-operation of the Commonwealth Club.

In this letter Mr. Gray outlines a "fundamental plan," to which plan Mr. Lilienthal has given his hearty approval, and promised to present it to the Board of Governors of the Bar Association for action.

Subsequently Mr. Gray addressed a second open letter to Messrs. Lilienthal and Hodghead, in which he suggested the utilization of the instrumentalities of the Bar Association and its membership in "legal aid" work in a manner similar to that recently adopted at Los Angeles, and also advocated the establishment at once of a practice class to be conducted by lawyers for lawyers and students, under the auspices of the Bar Association of San Francisco, "to supply, as far as practicable, the deficiencies, largely unavoidable under the present conditions, in preparation for actual professional work of the lawyer in the office and courtroom."

Mr. Gray's "fundamental plan" for a class in "Law Sociology," as described in his first open letter, provides:

First—"The scope of the study (while necessarily limited by circumstances in its operation) shall be broad enough to include any judicial operation with reference to a rule of action, but considered always from the point of view of the general welfare.

Second—"The guiding principle in the pursuit of such study shall be to develop the power and disposition of the individual to work with others for the general welfare in the judicial operation of rules of action.

Third—"Some method and means for such study shall be determined, provided and controlled by the Bar Association of San Francisco, with the co-operation of the Commonwealth Club of California.

Fourth—"Any member of either the Bar Association of San Francisco or the Commonwealth Club of California, and any other person approved by a joint committee of those organizations shall be eligible to join in such study through such method and means, but especial effort shall be made to enlist in such study members of the legal profession and those preparing for that profession and the co-operation with them in such study of the general public, and the assistance of all the governmental instrumentalities of the Commonwealth."

The suggestion of Mr. Gray for the establishment by the Bar Association of a Law Practice Class is somewhat along the lines of "visualized teaching," so

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successfully introduced by him into the work of the Y. M. C. A. Law Practice Class. The first course of that class, in office and the simpler forms of court work, has been completed and will not be again taken up, at least for the present, as the class is preparing to go forward with the second course, which deals with appellate practice.

A tentative method of operation for a Bar Association Law Practice Class was outlined by Mr. Gray in an address before the faculty and students of the Y. M. C. A. Law School at the opening of the fall semester. Mr. Gray's topic was "After Graduation—What?" He said:

"The scholastic graduate is loaded down with equipment and the world demands efficiency with only one alternative, humiliating defeat.

"The tendency of the schools of law has been to give their students so many things that they cannot even remember their names.

"The world demands of the graduate, 'What work can you, better than others, do?'"

"Success depends upon the concrete answer to that demand. What is the work to which the graduate of the law school is dedicated? Ascertaining and making plain the truth which should prevent or control a controversy.

"Where the law is uncertain there is no law. Where the high priest and votaries of the law are unable to ascertain, with a fair degree of celerity and sureness, and through the fog of controversy, the truth that is vital, and make that truth plain, there is judicial anarchy.

"Practice in ascertaining that truth in consultation with client and antagonist and witness independent of legal proceedings, to foresee the controversies likely to arise, and make plain the truth to client and antagonist and court and jury, is the one vital thing which the schools of law do not really undertake to give. It can be given and in abundance, but only by the bar associations co-operating with the schools of law and the general community, first in study work made to conform to actual practice, and second in actual practice in greatly needed sociological work.

"To the law graduate I have only one specific piece of advice, and that is to try and get the bar association with which you are affiliated or hope to affiliate, to organize law practice work and if, for any reason, you cannot bring that about, organize a junior bar association with at least five members and, if possible, one of whom has had general experience in actual office and court work. Such group of five, whether working under the auspices of an established bar association or not, affords an opportunity for work as follows:

"Two clients with their attorneys and a judge. Such attorneys and clients enacting before such group, consultations between client and attorney; attorneys conferring with each other in an effort to secure further information and also to bring about settlement failing which the attorneys proceed to carry the controversy through the proper forms of court proceedings of various kinds; all affording practice in office and court work closely approximating actual conditions.

"The assistance of able and experienced members of the bar can be procured to any needful extent, but the work needs to be mainly done by the group itself, and even the tyro, as well as the partially trained and also the experienced, should share in the work of such judge, and if several groups are formed, such interchange of work becomes more easy and valuable, and it should be carried on at a place where fairly complete library facilities are directly available.

## PUBLIC DEFENDER ENLISTS BAR ASSOCIATION

"Ultimately real office and court work in actual cases meeting sociological necessities will surely arise and, if conducted under proper supervision and with proper assistance from a large and able bar association, will prove invaluable to all concerned."—From the *Recorder*, San Francisco, Sept. 5, 1914.

R. H. G.

**Los Angeles Public Defender Enlists Bar Association for Legal Aid to Poor.**—Los Angeles has a public defender, with one deputy and five assistants, whose duty is particularly to defend poor persons charged with crime, and also to prosecute "actions for the collection of wages and of other demands of persons who are not financially able to employ counsel, in cases in which the sum involved does not exceed one hundred dollars, and in which, in the judgment of the Public Defender, the claims urged are valid and enforceable in the courts. He shall, upon request, defend such persons in all civil litigation in which, in his judgment, they are being persecuted or unjustly harassed."

The demands of poor people upon the public defender, many of which, while meritorious, are out of his jurisdiction, are so numerous that Mr. Walton J. Wood, who fills that office, called upon the Los Angeles Bar Association to endorse and recommend certain attorneys to whom he might refer persons soliciting legal services of a character beyond his authority to render, because of the limitations of the county charter.

### *Describes Plan of Procedure.*

In a letter to a well-known San Francisco attorney, the public defender thus describes his plan of procedure:

"At my request the secretary of the Bar Association, under authorization of the trustees of the association, addressed to all of the members a communication telling them of the need for co-operation with my office in matters in which I was not instructed by law to appear as attorney. To all of these communications was attached a slip for each member willing to co-operate to sign and return. About forty attorneys signified their willingness to take cases referred to them by the public defender. While most of these are young attorneys, some are leaders of the bar and signed their return card solely for the purpose of helping in the movement.

"Before sending the list to me the trustees of the Bar Association looked into the records of each of the attorneys so that none should be recommended who were not considered reliable.

"I at once addressed a communication to each of these attorneys explaining the nature of our work and what assistance they would be able to give us.

"We are adopting the method of sending the persons calling upon us for assistance (whom our office is not authorized by law to represent) to the members on this list of attorneys in arbitrary rotation. The list is arranged alphabetically and a record is kept of each applicant recommended, as well as the name of the attorney to whom recommendation is made. The applicant for assistance is provided with a printed slip bearing the name of the attorney recommended and a statement of the conditions under which the services are rendered. There is attached to this paper a slip for the attorney receiving the applicant to sign and return to our office. While we have just started this plan I believe it will work out successfully. In this way the attorneys who are willing to accept these cases will be able to receive them and we will be able



## PUBLIC DEFENDER ENLISTS BAR ASSOCIATION

to take care of all of the applicants who apply to us for assistance whether we are instructed to help them under the county charter or not. I believe that the lawyers in every large city should co-operate to take care of the legal affairs of the poor in some systematic way the same as we are using in Los Angeles."

In his letter to these volunteer assistants, the public defender, after quoting the provision of the Los Angeles county charter quoted above says:

"It is clear that under this charter provision we are not authorized to file suits for divorce. It is also clear that this charter provision calls upon us to enforce demands that are reducible to money judgments in proper cases. This does not include the ejection of tenants on behalf of landlords. In fact it would not appear that a free attorney should be provided for a landlord in ejecting tenants. These two classes of cases are the most common which we will have to refer to lawyers outside of this office. Now and then small estates are to be settled and sometimes the amounts involved are over one hundred dollars, especially in the cases of actions for personal injuries. Other cases are those in which applicants are defendants in civil actions, there being no evidence of harassing or persecution.

"I am enclosing a copy of the printed form which we are using in handling these matters. These forms are numbered in regular order and each deputy is instructed to take names on the list in alphabetical order, referring each time to the stub in the office to see the name of the lawyer last recommended. The prospective litigant will bring a stamped envelope and a slip of paper to be returned to the public defender's office. I urgently request each attorney receiving one of these cases to detach the slip and mail it to this office, so that we may know that the party who called upon us has in fact called upon the attorney recommended. The conditions under which these parties are being recommended are printed on the back of the slip which is given to each applicant. The deputies in our office are instructed to investigate each case to some extent before recommending an attorney. This will be done for the purpose of avoiding sending litigants who probably have no right of action. This office will not endeavor to determine finally whether or not an action should be brought. We will look into the case sufficiently to determine whether or not there is a probable cause for action. The lawyer who accepts the case must ultimately determine the propriety of bringing action; especially is this true in divorce cases. Some of these are cases in which clearly no fee should be charged, while in other cases it is clear that the attorney would be justified in charging a fee. In most divorce cases the applicant will be able to pay a small fee in monthly installments or will be able to get an order from the court for the husband to pay a fee.

"We believe that the spirit which has induced the members of the bar to offer to assist us will lead them to exercise proper judgment in the charging of fees. Our office will not undertake to determine this point unless it is especially referred to us by the lawyer recommended or unless the applicant shall especially request it. We must remember in this matter, however, that most of these people come to us when they are in financial difficulties and are entitled to services free of charge unless they truly are able to compensate an attorney. While under the law the public defender would be justified in performing only those duties which the charter directs him to perform, I have felt that some means should be taken to assist the large number of people who

## PAROLE LAW IN LOUISIANA

ask us for assistance and who urge us to recommend attorneys when we tell them that we are not authorized to represent them. Hitherto we have refrained from making recommendations, for various reasons which will appear to any one who gives the matter consideration."—From the *Recorder*, San Francisco, Sept. 8, 1914.

**Recently Enacted Parole Law in Louisiana.**—An Act to authorize the Governor and in his absence the Lieutenant Governor, to parole convicts held in the state penitentiary on the recommendation of, and under rules and regulations made and conditions fixed by the Board of Control of the state penitentiary, and to authorize the said Board of Control to make such rules and regulations and to fix such conditions; to limit the eligibility of convicts to parole and to exclude certain convicts from parole; to require the consent of the Board of Pardons as a condition precedent to the parole of convicts serving life terms; and to require that convicts granted parole shall be furnished with certain necessary assistance.—(Senate Bill No. 152. Substitute by Committee on Penitentiary for Senate Bills Nos. 23, 24 and 26. Act 149.)

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the Board of Control of the state penitentiary shall have power to make and establish rules and regulations, subject to the approval of the Governor, and in his absence, of the Lieutenant Governor, under which convicts who are serving their first sentence for a felony and who have not been convicted of treason, arson, rape, attempt to commit rape or crimes against nature shall be eligible to parole; provided that no convict shall be eligible to parole, unless he is entitled by good conduct to a reduction of sentence under the laws of this state.

Section 2. Be it further enacted, etc., That the Governor, or in his absence, the Lieutenant Governor, shall have authority, upon the recommendation of the Board of Control of the state penitentiary, to issue a parole or permit to go at large to any convict who now is, or hereafter may be, imprisoned in the penitentiary of this state, except as otherwise provided in this act.

Section 3. Be it further enacted, etc., That no parole shall be granted to any convict until he shall have served at least one calendar year of the term for which he was sentenced; and that no parole shall be granted to any convict serving a life sentence until he shall have served at least one-third of the actual time he would have served if classed as eligible for reduction of sentence under the laws of this state, and in case of "life termers," the parole must be approved by the Board of Pardons.

Section 4. Be it further enacted, etc., That every convict, while on parole, shall remain in the legal custody of the Board of Control, and shall be subject at any time to reincarceration for a violation of the law, or of the rule of conduct fixed by the Board of Control and this shall be set forth in the agreement of parole signed by the Board of Control and the prisoner, a copy of which shall be given to the prisoner. Upon the request of the Board of Control, it shall be the duty of the Governor, or in his absence, the Lieutenant Governor, and he is hereby required to issue a written order which shall be a sufficient warrant to all sheriffs, constables, marshals, policemen, and other peace officers of the state, to return to actual custody in the penitentiary any such paroled convict, and it is hereby made the duty of said officers to execute said order the same as in ordinary criminal process. The paroled convict,

## PAROLE LAW IN LOUISIANA

who may upon such order of the Governor, or in his absence, the Lieutenant Governor, be returned to the penitentiary shall be retained there according to the term of his original sentence, and in computing the period of his confinement, the time between his release on said parole and his return to the penitentiary shall not be included as part of the term of his sentence.

Section 5. Be it further enacted, etc., That this act shall not be construed in any sense to operate as a discharge of any convict paroled under its provisions, but simply as a permit to any such convict to go without the penitentiary under the conditions and regulations of the parole; and if while at large he shall so behave and conduct himself as to incur his reincarceration, he shall be deemed to be still serving out the sentence imposed upon him by the court, and shall be entitled to good time the same as if he had not been paroled.

Section 6. Be it further enacted, etc., That the documents or papers setting forth the conditions or regulations of parole fixed in the recommendation by the Board of Control, whether or not the parole be granted by the Governor, or in his absence, the Lieutenant Governor, shall be deposited in the office of the Secretary of State, who shall become custodian thereof, and the said documents or papers shall be public records. If the parole be granted by the Governor, or in his absence, the Lieutenant Governor, a copy of the conditions and regulations thereof shall be furnished to the paroled convict.

Section 7. Be it further enacted, etc., That the Board of Control may designate one of its members, or one of its officers, or employees to investigate any complaint of the violations of the conditions or regulations of a parole, and said board shall have full authority to determine whether said conditions or regulations have been violated.

Section 8. Be it further enacted, etc., That it is hereby made the duty of the prisoner so paroled to notify the sheriff of the parish that he has taken up his residence in the said parish, and it shall be the duty of the said sheriff to make reports concerning said prisoner or prisoners as the rules of the Board of Control shall set forth and require.

Section 9. Be it further enacted, etc., That every paroled convict shall, upon being discharged on parole, be furnished with a serviceable suit of clothes, with transportation to such place as he may elect to go within the State of Louisiana, and with Five Dollars (\$5.00) in money.

Section 10. Be it further enacted, etc., That nothing in this act shall affect in any way the granting of pardons or commutations by the Board of Pardons, nor in any way affect or abridge the right of commutation now provided by law.

Section 11. Be it further enacted, etc., That all laws or parts of laws in conflict with the provisions of the act are hereby repealed. (Approved July 8, 1914.)

The above parole law will be in effect on November first. The Board of Control of the state penitentiary has not yet decided as to who will be the first to test the new plan.

The measure passed by the Legislature gives the board almost absolute discretion. The only important difference between the powers of the Pardon Board and its own will be that the pardons are not revocable, while a parole may be canceled if the recipient proves unworthy and incapable of reform.

When the new duty was imposed upon the penitentiary officials they gave

## SUSPENSION OF SENTENCE IN LOUISIANA

the matter serious study. They wrote to other states that have similar systems in force and selected what they deemed the best points from the data secured. Louisiana conditions differ from most others, in that it possesses a convict population which is 85 per cent negro. However, it devised a set of rules which are now in the hands of Gov. Hall for final approval. His signature and suggestions are daily expected, and then will come the part of the work which is most interesting to the men in the convict camps and their families.

There will be innumerable petitions and all sorts of pressure, but the board anticipates that as soon as its settled policy is known and understood it will be able to give the humanitarian and reformatory plan a fair test upon its merits. A clear distinction will be drawn between clemency and "tickets of leave," and benefit to society attempted without undoing the important work of the criminal courts.

W. O. HART, New Orleans.

**Recently Enacted Law for Suspension of Sentence in Louisiana.**—An act to provide for the suspension of sentence in misdemeanor convictions and in certain cases of conviction of felony for first offenses, upon the recommendation of the jury and for submission of the issue to the jury by the court, and to provide the duration of the suspension of sentence and for pronouncing sentence after suspension thereof in case of final conviction of the defendant of any other felony, cumulating punishment in such cases, and for granting a new trial after suspension and dismissal of the case in certain events after suspension.—House Bill No. 6. Act No. 74.

Section 1. Be it enacted by the General Assembly of Louisiana, That when there is a conviction of any felony in the District Court of this state, except murder, rape, perjury, burglary of a dwelling, robbery, arson, incest, bigamy, abortion, and assault with intent to rape, the court may suspend the sentence when the jury shall find in their verdict that the defendant has never before been convicted of a felony in this state or any other state and shall recommend that the sentence be suspended.

Section 2. Be it further enacted, etc., The court shall permit testimony and submit the question in all felony trials, where there may be a conviction of any crime other than set out in section one hereof, as to the general reputation of the defendant to enable the jury to determine whether to recommend a suspension of sentence and as to whether the defendant has been convicted of a felony, but such testimony shall be submitted only upon the request of the defendant, provided that in all cases sentence may be suspended if the jury recommends it in their verdict. Provided, further, that in such cases, if the sentence be suspended, neither the verdict of conviction nor judgment entered thereon shall become final, except under the conditions and in the manner and at the time provided for by Sec. 4 of this act.

Section 3. Be it further enacted, etc., That when the jury recommends the suspension of sentence, the court may sentence the defendant but suspend same, and the judgment of the court on that subject shall be that sentence of the judgment of conviction shall be suspended during good behavior of the defendant. By the term good behavior in the act is meant that the defendant shall not be convicted of any felony during the time of such suspension.

Section 4. Be it further enacted, etc., That upon the final conviction of the defendant of any other felony, pending the suspension of sentence, the court granting such suspension shall cause the arrest of the defendant if he

## POLICEWOMEN.

is not then in the custody of the court and during a term of the court shall pronounce sentence upon the original judgment of conviction, and shall cumulate the punishment of the first with the punishment of any subsequent conviction or convictions, and in such case no new trial shall be granted in the first conviction.

Section 5. Be it further enacted, etc., That in any case of suspended sentence as provided herein, upon the expiration of the time assessed as punishment, the defendant may make his written and sworn application for a new trial and dismissal of such cases, stating therein that since such former trial and conviction, he has not been convicted of any felony, and that there is not now pending against him any felony charge, which application shall be heard by the court during the first term after it is filed, and if it shall appear to the court upon the hearing of such application, that the defendant has not been convicted of any other felony the court shall enter an order reciting the fact and shall grant the defendant a new trial and shall then dismiss said cause, provided, further, that if the defendant is prevented from disability or other good cause from applying to the court to have the judgment of conviction set aside at the time provided for, he may make such application at the first term when such physical disability or other good cause no longer exists.

After setting aside and dismissal of any judgment of conviction as herein provided for, the fact of such conviction shall not be shown or inquired into for any purpose except where the defendant has again been indicted for a felony and seeks the benefit of this act.

Section 6. Be it further enacted, etc., If at the expiration of the time assessed as punishment, there be pending against the defendant any other charge of felony, the court shall upon the application of the defendant, which shall be in writing and shall state under his oath that he is not guilty of such charge, further suspend the sentence to await the final disposition of such other prosecution.

Section 7. Be it further enacted, etc., That when there is a conviction of a misdemeanor in any court in this state, the judge may suspend sentence if he shall find that the defendant has never before been convicted of any felony or misdemeanor. The court shall permit testimony as to the general reputation of the defendant and as to whether the defendant has been convicted of a misdemeanor or felony but such testimony shall be submitted only upon the request of the defendant. Provided further that if sentence is suspended neither the verdict of conviction nor the judgment entered thereon shall become final except under the conditions and in the manner and at the time provided for by Section 4 of this act.

Section 8. Be it further enacted, etc., That when the judge suspends sentence as provided for in Section 7 the entire proceedings relative thereto shall be the same as set out in previous sections of this act applying the same to misdemeanors.

Section 9. Be it further enacted, etc., That when sentence is suspended the defendant shall be released upon his recognizance in such sum as may be fixed by the court during such suspension. (Approved July 3, 1914.)

W. O. HART.

## POLICE—IDENTIFICATION.

**Policewomen.**—There has lately been a considerable agitation for the appointment of policewomen in England. Articles on the subject have appeared

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in several magazines. The Criminal Law Amendment Committee summoned a conference in Caxton Hall, Westminster, on June 19. The same committee and the National Vigilance Association organized deputations which interviewed the Under Secretary of State on the subject on 16th July. Deputations organized by the Women's Industrial Council have asked the London County Council Parks Committee and the First Commissioner of Works to appoint women park-keepers. Lord Henry Bentinck put down an amendment to the Criminal Justice Administration Bill providing for the appointment "in every county borough and in every metropolitan borough of the county of London, and by order of the Secretary of State in any other local authority being also a police authority, two or more women police constables, \* \* \* duly sworn in and given such duties as the chief constables in county boroughs or the chief commissioner of police in London may direct."

This was withdrawn, and Lord Henry proposed to make his clause permissive instead of obligatory, which would have cleared the way for the measures we propose, as indicated below. But parliamentary exigencies intervened, and the matter was dropped to enable the bill to get through quickly.

It was felt by the committee of the Penal Reform League that this movement, in which our country was already rather behind some other countries, was in danger of getting on to a wrong track. There seems to be a danger, namely, of merely obtaining policewomen under the old traditions of the force, police authorities who do not see the need of them being obliged to appoint policewomen against their will—in which case they might very likely appoint the wrong kind, and curtail their usefulness by unwise regulations.

The committee of the Penal Reform League therefore decided to make inquiries as to what had already been done in the way of appointing policewomen, and invited a number of societies in London to send representatives to a joint committee to consider practical steps to secure the appointment of suitable women as police constables. These invitations met with encouraging response, and on 13th July a joint committee met in the board room of the Girls' Friendly Society. Representatives, either provisional or regularly appointed, attended from the following societies:—The Committee of Social Investigation and Reform, Criminal Law Amendment Committee, Girls' Friendly Society, Ladies' National Association, Local Government Advancement Committee, National Union of Women Workers, Society for Promoting the Employment of Women, State Children's Association, Women's Industrial Council, Women's Local Government Society, and the Young Women's Christian Association. Members of the Women's Imperial Health Association and Women's Co-operative Guild also attended. The Women Sanitary Inspectors' Association had appointed two delegates, but unfortunately neither of them were able to attend at the time fixed.

The following resolutions were passed:

I. Resolution passed by a Conference summoned by the Criminal Law Amendment Committee on June 19th, 1914:—"That this meeting is of opinion that there is great need for women police. It therefore urges the appointment of women police constables with powers equal to those of men constables in all county boroughs and the metropolitan boroughs of the county of London." This joint committee of societies interested in the work and welfare of women and children and in penal reform, believing that the employment of policewomen will emphasize the preventive and protective side of police work, supports the above resolution.

II. This committee further urges the advisability of commencing by giving

## POLICEWOMEN

constabulary powers to women of high reputation, character and experience under the chief constable or other police authority.

III. That the London County Council and the Commissioners of Works be asked to appoint women park-keepers in the open spaces under their control.

Inquiries throughout the country elicited the fact that at least seven chief constables of large towns and three of counties in England, one chief constable in a town and two in counties in Scotland, and one high official in the Royal Irish Constabulary, are in favor of the appointment of women constables. It appears that there are in this country no women constables sworn in with power to arrest.

The plan we advocate, which seemed to be endorsed by the joint committee, is that the authorities who favor the appointment of women constables should be approached by societies or persons of standing and asked to begin by appointing and swearing in specially selected women of experience and standing—perhaps one in each of these selected localities at first—and allowing such women to feel their way and organize their own work under the immediate supervision of the chief constable or other authority, and have a say in the appointment of their own women subordinates as need and opportunity arise. This mode of procedure, we think, would afford the best start to the movement, causing the least possible friction or opposition with the most likelihood of success and efficiency.

As to the power of police authorities to swear in women as constables, this is a matter on which there is some doubt. A useful letter from Sir George Sherston Baker, judge of the County courts of Lincolnshire, appeared in *The Times* of July 29, in which he declares that there is "ample authority" for the appointment of women constables, and continues:—

I say authority, because the numerous statutes which have interlaced the common law of England may have affected the immediate possibility of such appointments without a new Act of Parliament. That is a mere question of careful perusal of the statute-book. But I desire to point out that such authority does exist. In the 28th year of George III (1788) the appointment of a woman overseer was debated in the King's Bench. The court allowed the validity of the appointment. Mr. Justice Ashurst in giving the judgment of the court said:—"There are many instances where women in offices of a higher nature are held not to be disqualified, as in the case of the office of high chamberlain, high constable, and marshal, and that of a common constable." (2 Term R. 395).

To this I may add that the celebrated Ann Countess of Pembroke, Dorset, and Montgomery had, according to Coke, the office of hereditary sheriff of Westmorland (civil and criminal) and exercised it in person. At the assizes at Appleby she sat with the judges on the bench.

I could cite other instances, but will only add one more—that of Lady Braughton, who, as it appears from Keble's Reports, was in 1684 the keeper of the prison of the Gate House of the Dean and Chapter of Westminster.

Failing the discovery of any statutory obstacle, we suggest that some authority with sufficient courage to take the risk be approached with the name of a suitable lady and requested to swear her in, give her a small office of her own and a free hand to feel her own way and organize her own activities in consultation with her local chief.

There are several pitfalls to be avoided and misconceptions to be cleared up. For instance, there is the physical strength bogey. One of the strongest women (with the kind of strength required) known to the present writer is one of the smallest. We do not want superior physical strength, but superior moral and spiritual strength. A good many women have this; and, as far as we know, it has no relation to their size. Therefore let us hope that there will be no attempt to fix a physical standard.

## THE AMBITIOUS POLICEMAN

It has been said that there is no need for policewomen (Scotland Yard has three with warrant cards, and there are one or two more in the provinces) to have power of arrest. They are not strong enough, it is said, and there are always men within call for that purpose if wanted. But presumably the men might be equally within call if the women had power of arrest and were in any difficulty about exercising it. However, we believe that, if the right women are appointed, on the one hand, they will not attempt what is beyond their power, and, on the other, they will be found to have more moral power than many of their male confrères, who are selected on other principles and under the physical force idea.

We have one or two good examples to follow. For instance, there is the appointment of Mrs. Wells in Los Angeles and of Miss Roche in Denver, Colorado. Take the following extract from an article in the *19th Century and After* for June (pp. 1374-1375):

In Denver, Colorado, there has been a woman in the police force since 1912. I was told in 1913 by friends living in the town that she had revolutionized the treatment of the young offender. "The best man on the Denver police force happens to be a woman," said the chief of police. . . . Miss Roche is the daughter of well-to-do parents, a graduate of Vassar College and a post-graduate of Columbia University. After having worked in a settlement in New York she lived in the Italian quarter there, studying the difficulties and temptations of the Italian emigrants. When she first took up the work of policewoman she tried to avoid the necessity for actual arrests. When she made the rounds of the places of amusement she did not say to the managers "Do so and so or I will have you summoned." She talked earnestly to them and spoke of the assaults and seduction that result from the nightly swarming of mere children to such places of amusement. She appealed to their sense of decency and love of family, and her policy turned the managers into active supporters of the law. She made the acquaintance of the leaders of the gangs of young hooligans. She refused to consider them as criminals, and she astonished the police when they found that these young ruffians responded to her appeals to their better nature. There is a story of an energetic policeman who went in the course of his duty to a dance hall. His presence was resented by the young Irishmen present and one of them struck him violently. A fight began and the policeman was getting the worst of it, when suddenly Miss Roche appeared on the scene. She stopped the fight with a few stern words and then escorted the policeman to a place of safety.

Who was the strong person here? Is it not clear that what we want is to appeal to a higher kind of force than that measured by physical standards?

Perhaps the chief misconception that we have to avoid is the notion that in this movement all we want is to have a few constables of the feminine gender. We do not merely ask for the addition to the police force of some women, or for the substitution of a few policewomen for a few policemen. We look for more than that. It is true that we ask for policewomen because, if women must be arrested, we think they should be arrested by women, not by men; because we believe that policewomen would in many ways be helpful to women and children and even to men. But we have hopes beyond all this; and we should not care so much for this movement if we did not see in it the promise of a new spirit in police methods, and, when the leaven has had time to work, of the transformation of our whole police department and of the public demands on it.—*Bulletin of the Penal Reform League*, London, July, 1914.

R. H. G.

**The Ambitious Policeman.**—After a policeman has been on the force for about five years, and during that time has mastered all the details and routine of police work he yearns for promotion. When a "chump copper" he



## COMMISSION ON DEFECTIVES

brings to the attention of the court many trifling cases which after being heard by the court a nominal fine is imposed or an appeal is taken by the parties from the court's finding. Upon appeal the case is "*nolle prossed*" by the prosecuting attorney as too trifling to take up the time of the court, or because the evidence is not strong enough to convict. He thinks that "quantity" instead of "quality" counts toward advancement in the police business. He begins to study and learn the principles of his profession. He must master the fine points of the detective art, and reach the summit of every "chump copper's" ambition, to get a place at police headquarters, "down town." It is important that he should know and learn the methods and habits of criminals; know the operation of the criminal mind; take a Bertillon measurement; understand finger prints; the laws governing extradition and arrest; what constitutes good evidence before a court. When he has mastered these essential details he is a fairly well-trained man in police work, and he knows that in detective work only the trained man succeeds. It is necessary that he should know the extradition laws and divorce legislation of the different states of the United States and foreign nations. He must learn how to write a police "circular," describe in an intelligent manner the personal appearance, habits, and peculiarities of any fugitive from justice in order that the police in a neighboring city can act intelligently on the information contained in the "circular," "make" the man and turn him over to the parties asking for his apprehension. A "harness-copper" will never put another "harness-copper" (an officer in uniform) "wise" to the many fine points of the police business; he has to find that knowledge out himself because each and every policeman is a candidate for promotion and no one cares to give an adversary an advantage over himself. There is now a correspondence school for the training of the "chump copper"; it is conducted by lawyers and criminal law specialists, and for a stipulated fee the ambitious copper can get this necessary education and training for his promotion and advancement. The number of young and inexperienced police appointed cause an abnormal swelling of court and criminal statistics; their errors of judgment and mistakes are overlooked by statisticians who seek other causes for the increase of crime but who overlook this vital reason why the court calendars are choked with trifling and petty offences against the law.

JOSEPH MATTHEW SULLIVAN, Boston, Mass.

## MISCELLANEOUS.

**State Commission on Defectives in the State of New York.**—Like the menace of fire in waste, danger lurks in the community that fails to care for its feeble-minded. Gov. Glynn has appointed a commission, headed by Mr. Robert W. Heberd, and including specialists like Dr. Charles L. Dana and Dr. Max G. Schlapp, to inquire into and report to the next legislature ways of averting this danger to the state.

Whether they are cared for by agencies that can decrease the hazard and add to their welfare, or whether they are let loose on society, as now, the 30,000 defectives in this state will be an expense. They are incompetent, they cannot support themselves. Sooner or later they are coerced to evil practices that lead to perversion and crime. In the end the intelligent care of these unfortunates will be found the more economical.—*N. Y. Times*.

Such a commission might well include in its work an inquiry into the relation between venereal disease and feeble-mindedness. That such a relation

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exists is generally believed but accurate statistical data and well-grounded general conclusions from scientifically ascertained facts are needed.—*American Social Hygiene Bulletin*, September, 1914. R. H. G.

**The Annual Meeting of the Social Hygiene Association.**—For the annual meeting of the American Social Hygiene Association, Inc., in New York City, October 9-10, 1914, the following program was presented:

October 9th, 10:00 a. m. Annual business meeting in the association's library, 105 West 40th street, open to members only.

2:30 p. m. Open meeting in the Assembly Hall of the Metropolitan Life Insurance Company's building, 4th avenue and 23d street.

Mrs. Martha P. Falconer, chairman, Committee on Social Hygiene of the National Conference of Charities and Correction, presiding.

Dr. Katharine B. Davis, commissioner of correction, New York City. "Departments of Correction and the Social Hygiene Movement."

Dr. Lee K. Frankel, sixth vice-president, Metropolitan Life Insurance Company. "The Interest of Life Insurance Companies in Social Hygiene."

Mr. Frank L. Brown, general secretary, World's Sunday School Association. "The Church and its Organization, and Social Hygiene."

Dr. Luther H. Gulick, president, Camp Fire Girls of America. "Boys' and Girls' Organizations and Social Hygiene."

Discussion by Mr. James E. West, chief scout executive, Boy Scouts of America.

8:30 p. m. Open meeting at the same place.

Dr. Edward L. Keyes, Jr., president of the Society of Sanitary and Moral Prophylaxis, presiding. "Social Hygiene Activities in 1914."

A speaker yet to be chosen will present a paper on "Medicine and the Social Hygiene Movement."

President G. Stanley Hall, Clark University, Worcester, Mass., "Education and the Social Hygiene Movement."

Mr. Abraham Flexner, assistant secretary, General Education Board, "Legal and Administrative Phases of the Social Hygiene Problem."

October 10th, 11:00 a. m. In the association's library, conference of persons actively interested in social hygiene work.

A visit to the venereal disease clinic of the department of health, New York City, has been arranged for physicians and other interested persons for 11 a. m., October 10th.

The open sessions were all under the joint auspices of the association and the Society of Sanitary and Moral Prophylaxis.—*American Social Hygiene Association Bulletin*, September, 1914. R. H. G.

**The Fortieth Annual Report of the Chief City Magistrate of New York.**—The report of Chief City Magistrate William McAdoo of New York for the year ending December 31, 1913, is the most valuable official contribution to the literature of police administration in America that has been published during the last twelve months. The problems confronting the administrative and the judicial police authorities in all American cities are the same in kind though varying in degree and the reforms which Justice McAdoo recommends are worthy of careful consideration by all who are interested in the efficient administration of the police power and the criminal law in American cities.

The magistrates should be given power to dispose of all cases of misde-

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meanor brought before them. In many cases they are limited at present to a preliminary investigation and must hold the prisoner for trial at a subsequent date before a higher criminal court, if the evidence warrants it. This procedure is a glaring economic waste in the administration of the criminal law. It wastes the time of the policeman and of the complainant, it affords the criminal an opportunity to buy off or to bully the complainant and it imposes several weeks or months of imprisonment upon many innocent men who must go to jail pending their arraignment in the higher criminal court, if they cannot provide bail.

During the last year the powers of city magistrates have been enlarged by statute and clarified by judicial decisions. They may now remand for sentence after conviction, may issue a summons and a warrant returnable in any part of the city, and were given greatly enlarged powers in the enforcement of the laws with reference to prostitution, disorderly conduct and rowdyism.

To relieve the congestion in the various magistrates' courts Justice McAdoo recommends the establishment of a Departmental Magistrate's court in which all cases for the infraction of the ordinances relating to health, safety, tenement houses, truancy, fire prevention, child labor and similar regulations in which the complaint is made by a city department acting through its corps of inspectors may be tried with a minimum of inconvenience to the defendant, without loss of time on the part of the city employes and without congesting the calendars of the regular courts. Similar courts have been established in Germany and have accomplished the results mentioned above.

A fourteen story prison and court house for women is now being built in New York. After this building has been completed all female prisoners, with the exception of intoxicated women, will be taken at once to this building and will be spared the ordeal of arraignment in a police station and in an ordinary magistrate's court. Women will under the proposed system of administration of this prison, which will be under the jurisdiction of Dr. Katherine Bement Davis, be given the most humane treatment accorded to women offenders in any city of the world.

Sections of the report are also devoted to the functions of the probation officers and the finger print experts of the courts, to the enforcement of the law in the night court for women and to the activities of the central office and the subordinate employes of the courts.

The annual report of Justice McAdoo contains so much material of distinct practical value to administrative and judicial police officials that every police officer and police justice should read it carefully, for his own benefit and the benefit of the community which he is serving.

LEONARD FELIX FULD, New York City.

## REVIEWS AND CRITICISMS.

PENAL PHILOSOPHY. By *Gabriel Tarde*. Translated by Rapelje Howell, Esq.: Little, Brown & Company, Boston, Mass. Pp. 567; \$5.00.

For the reviewer, books fall into three general classes: those that can be dismissed with a summary, those that demand attentive analysis, those that are so fertile and provocative of ideas as to be almost impossible of summary handling. M. Tarde's book belongs to the last class. In scope, in erudition, in profundity and in common sense, it seems to the reviewer unequalled by any of the books in the criminological series and without a peer outside the series. Rarely, in philosophy or in law, has there been brought to the task of determining the nature of the criminal, his responsibility to society and society's responsibility to him, a vision at once so humane and adequate, so philosophical and sane as M. Tarde's. Differ as one may or must on the innumerable philosophic issues which he touches, one is compelled to acknowledge that his views are in each case grounded in fact and experience, and that the difference is much more likely to be due to temperamental outlook than to objective perception.

M. Tarde finds that contemporary society is undergoing a sort of moral interregnum. The dogmas of the ancient tradition are worm-eaten and moldering; they hang together by a sort of inertia, but support nothing. New principles that shall be sound enough to do the work of the old have not yet been discovered, although everybody who tries his hand at smashing the old code messes up a new and private one, unfounded in common experience. Behind the old code there is no longer any authority; among the new ones there is only a babel.

In criminal law, the old underlying dogma was "free will." But this dogma is subject to objections of reason and objections of fact. Logically, if each act is spontaneous or uncaused, there can be no possible connection between any two acts, no continuity in life, no responsibility in conduct. Logically, "free will" and responsibility are contradictory conceptions. As a matter of fact, however, continuity and connections are traceable in all experience. One event is determined by another throughout all the realms of experience; determinism is the demonstrable assumption and the observable basis in the facts of the inner life, in biology and psychology, in sociology and in natural science. And as a matter of fact, moreover, in all great crises the plea, "I had no free will," would have made no difference; the results of the trials of Socrates, Huss, Wickliffe, Galileo would have been the same whatever the plea. Determinism neither mitigates nor abrogates the sentence when society is sure of having identified and secured the criminal.

This does not, however, make determinism an adequate substitute for free will, since determinism, on the largest possible scale implies indeterminism, either in the will of God, or in each atom; everything can be explained by invariant law, "except the materials of the laws

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and the point at which operations began." Metaphysically, then, there is a libertarian root for existence; but unhappily it cannot be the root which nourishes the fruit of justice in the law court.

To discover that it is necessary to approach the problem of responsibility from another point of view—from the point of view of the underlying conceptions of "duty" and "right." Tarde formalizes the psychology of "duty" by defining it as the conclusion of a syllogism the major premise of which is a *wish*, and the minor premise, the proper perception of the means of attaining that wish. The concluding *ought* becomes an *imperative* when the major premise stands for a public need, a social wish or national ideal, thus: Society wishes protection from its enemies; the means of protection is punishment; therefore, the enemies of society *ought* to be punished. This *ought*, when enforceable, constitutes a "right;" and all rights are based on duties in the same way. But social "duty" is only a congeries of individual duties that harmonize; society is implicitly contractual, and even the antisocial member of society concedes the right of society to punish. For individuals live together by virtue of the exchange of satisfactions of wishes; and where one individual gives little or nothing, or does harm, society, in order to maintain the social equilibrium, must punish to balance accounts. That is what penal legislation invariably does.

But to do that, penal legislation must get hold of the individual, it must be able to identify him, and this, under the assumptions of either free-will or determinism, cannot be done. The one comminates the criminal into a series of isolated acts, the other dissolves him into the continuity of the universe. But what is he actually, empirically, as the law deals with him and fixes responsibility upon him?

Tarde devotes the remainder of his book to answering this question. Since responsibility depends upon identity, it becomes of fundamental importance to determine the nature rather than the freedom of the responsible individual. The great historic determination is, of course, that of the positivist school. Tarde formulates four central questions which he summons the school to answer, the questions being such that their answers will constitute the sum of penal philosophy. He asks them:

1. What is responsibility, free will being left out of consideration?
2. What is the criminal according to the most recent results of science, and into what natural classes does he fall?
3. What are the nature and causes of crime, according to statistics?
4. What ought punishment to be?

The positivists' replies are of course familiar. 1. Society and the individual are engaged in a struggle for existence. The individual does what he must, and society what it must. Punishment is only a term in the warfare between the two; it is really *defense*. The consequence of this position is, Tarde thinks, irresponsibility, and its practical outcome mitigation of sentence or release. 2. The classification of criminals is highly diversified. Some classify them as criminals

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from habit or opportunity; others as congenitally perverse, or perverse by training; Lombroso, as savages and atavisms or madmen and epileptics; while Marro finds a definite criminal type with large ears, long cheeks, flat nose, ambidexterity, light weight, insensibility to pain, etc. Finally Paul Albrecht points out that the "criminal head" is so widespread as to make the honest man the exception. Tarde has no difficulty in showing the superficiality and inadequacy of these classifications, and in reducing the "criminal type" to conditions of a poorly-nourished nervous system, misfortune, and poverty. 3. Crime, considered apart from the criminal, has to be defined in nature and cause. In nature, Garofalo designates the "natural offense" (Tarde prefers the word "essential"), which is an injury against what society considers its best interests. The causes of crime, Tarde agrees, are to be sought for in the natural and social environment, although he maintains that statistics are necessarily inadequate to the determination of the exact influence of varying causes. 4. Remedies for crime must, of course, consist in the removal of causes. Natural causes, climate, etc., cannot, obviously, be altered; but social changes initiated by individual genius can have salutary effects, such as came about by the substitution of coffee for alcohol, the reduction of piracy by the invention of steamships, etc. These, however, are broad, large and uncontrollable changes. The minor changes at hand are the substitution of reformation for punishment, the perfection of the judges, the limitation of jury-power etc., etc.

Having disposed of the positivists, Tarde offers his own answers to the four questions. Since responsibility depends upon the identity of the criminal, the establishment of personal identity becomes of paramount importance. Such an identity can at best be empirically determined; it consists in the definition of what is actually meant in determining the *cause* of crime. Now it appears that the meaning of *determination* of cause is in each case *localization of the origin of a process*. The real problem is not *what*, or *who*, is the cause, but *where* is the cause? Thus we say nowadays that the cause of a murder is in the brain of the murderer; anciently it was localized in his family, and still earlier in his tribe. Today, even the brain may be too large a field of responsibility, since psychological science has individualized portions of the brain, even as the law has individualized the members of a family; and responsibility may be fixed in a lesion, or a functional derangement, which may, perhaps, be extirpated without otherwise changing the individual. The essential step in determining responsibility, then, consists of individualizing the cause of an action, localizing its origin, and making sure that it is *that and no other*. This "*that and no other*" is a constellation of habits and ideas dominated by a leading idea or notion such that it constitutes a personality which has "character." It is a "force-idea" that confirms and fixes itself by belief in itself, and imitation of itself, and becomes less changeable as the individual grows older. In a world in which all things change, however, identity is itself a fluid thing, and its responsibility has further to be specified, if it is to be real. This specification resides in the *social similarity* that exists between the individual cause of a crime

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and the group that suffers from it. The similarity must be fair and definable, otherwise there is no responsibility. A madman, although the *same* madman who committed crime after crime, is not regarded as responsible because he is not *the same* as his fellows. The latter sameness rests upon the common or imitative pursuits of the same set of ideals; on their having become part of the habits of our daily life. This pursuit arises partly through our natural similarity to one another, partly through the socialization of desires by means of *imitation*, and thus the establishment of a system of co-ordinate individuals, which we call "society," that possesses an individuality of its own, an individuality analogous (Tarde develops the analogy at great length) to the resultant constellation of ideas that composes "character" in an individual. This individuality involves a general similarity of tastes and desires in a human group; a common linguistic symbol for individual feelings such as will make possible, on the whole, unanimous approvals or disapprovals of specific actions. It is the basis of "professional etiquette," of "honor among thieves," the conception of "honor" among military classes, etc. The criminal must feel that he deserves his punishment, even if he does not desire it; and this he cannot feel unless he is *like* society in the respect above mentioned. Criminal law, hence, is definitely called upon to determine the boundaries of a society if it is to determine the responsibility of a criminal.

Tarde's proof that responsibility rests upon personal identity and social similarity proceeds by the method of difference as well as by the method of agreement. Examples of the irresponsible before the law are the mad, the intoxicated, the hypnotized, the senile, etc. Thus, the irresponsibility of madness arises from the fact that the madman has lost the power of social assimilation and has been alienated from both his surroundings and himself; his actions are determined by a cause external to his "myself." Other types of irresponsibility exhibit the same characteristics.

The nature of responsibility having been determined, Tarde passes to the demonstration, *contra* the positivists, that there is no such thing as a criminal type, and that all the positivist stigmata stigmatize only positivist modes of thinking. Criminals, he points out, acquire professional similarities, like clergymen or professors. Most men become criminals by accident or misfortune, and those who enter the profession through a special aptitude are comparatively few and not anthropologically identifiable. But once in the profession, they learn to think professionally and to feel professionally and so conform to type. They may be divided laterally into two classes: thieves and murderers—violators of the right to property, and violators of the right to life. Vertically they may be classified as agricultural and urban offenders. Tarde makes the classification in terms of sociologic similarities because he regards them the best basis for a program of helping criminals back to honesty and usefulness.

If there exists no specific criminal type, there cannot exist a cause or series of causes from which crime must necessarily be deduced. Hence, the causes of crime must be empirically studied, and the best method and basis for such a study is naturally statistical, though our

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statistics are poor and meager. What they saliently reveal is the regularity of the recurrence of crime. Such a recurrence points to social imitation as a potent source and furnishes conclusive evidence against the doctrine of free will. Of the factors said to underly the commission of crimes—the physiological, the physiographic and the social—the first two are negligible and can hardly be dealt with when they do matter. It is the last, the social cause, that counts. Thus, if woman is said to be less criminal, it is not because she is a female, but because her social life (Tarde does not consider that this may be determined by her physiological character) makes for sedentary and homekeeping habits. If there is much crime against life in Corsica, the crime turns on the fact that society is still organized in clans. The causes of crime are social.

Now, for Tarde to say "social," is the same as to say "imitative." Believing as he does in the primacy and ultimacy of the individual, in his responsibility, because of this primacy and ultimacy, it follows that in his view the social order is established by the imitation of each other by individuals. Imitation of the *other* is the generator and dynamic of personality. Its movement is from the lower toward the upper classes, and Tarde shows plausibly enough, how, in the matter of crimes and vices, drinking, smoking, poisoning, poaching, rowdiness, arson, etc., were once the prerogatives of the nobles. Men imitate the cut of a throat no less than the cut of a coat. The process and effects of imitation are most clearly observable in large cities, where crime increases geometrically with the population. This is due to the character of our civilization. For a civilization may be marked either by its *cohesiveness*, or by the richness and variety of its contents and expression. Modern civilization belongs to the latter mode, and it involves an enormous increase of the desires of men and of the means of their satisfaction no less criminally than lawfully. Whatever offers opportunity for honest action also offers opportunity for criminal action. This action, indeed, has tended to change from violence to craft, and crimes tend to become predominantly torts. The whole process of change in the character of crime in the course of the alteration in the character of society is at once a confirmation and a vindication of the theory of responsibility. For the change indicates that the continuity of the criminal's identity has remained unbroken and that his similarity to the residuum of society has been uniform and apparent.

In sum, the bulk of crime arises and maintains itself in the long run by imitation of the higher classes by the lower, in the attempt to satisfy permanent or ephemeral desires. Responsibility for it rests upon personal identity and social similarity, these being essentially analogous activities of self-maintenance by means of imitation, on the one side of a system of ideas, making an individual; on the other side, of groups of such systems, making a society. The criminal act is marked by the violation of a right, i. e., by what is at bottom the use of improper means, of means not socially sanctioned, for the satisfaction of a need. The final problem logically and the foremost practically is how to make such acts impossible.

The solution of this problem depends obviously upon what one



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regards to be of primary import in social life. For Tarde, it is the individual; rightly the individual, from the reviewer's standpoint. "Social life," says Tarde, "is nothing more than an interlacing and tissue of the production or the exchange of services and the production or the exchange of injuries." The estimation of the effect of an injury tends more and more to the consideration also of the welfare of the criminal who is part and parcel of the society which punishes him. Criminal procedure has raised two questions—that of fact: has the accused committed the offense charged against him? and that of judgment: what, if he is guilty, shall be done to the accused? The establishment of "the fact" is attained nowadays by means of the jury system. It is an imperfect and unsatisfactory device, and its persistence rests upon the difficulty of finding an adequate substitute. In Tarde's view, such a substitute would be the scientific expert who should establish the "proof of fact," and a properly trained judge, an "enlightened moralist, psychologist and sociologist," who should pass the judgment of fact. If necessary, penalties should extirpate the cause of crime. It can be done, for heresy was extirpated in Spain, and brigandage in Rome. The guide as to the appropriate penalty should, however, never be a fixed law, but public opinion, inasmuch as the wishes of the public constitute the actual social standard for moral judgments. Theory is confirmed by history again in this matter, since the tendency of these judgments has been toward a greater and greater consideration of the criminal, while purely social action would require the extirpation of each criminal as he appeared. Penal justice, therefore, aims, however blindly and inefficiently, to secure to the criminal whatever atom of happiness in society there remains for him. It wishes, indeed, to *convert* him, to make him harmonious with itself.

A number of issues present themselves at once: e. g., the nature of "free will," and whether the tradition which assumed it is really nonsensical; the exact significance of imitation, particularly in the maintenance of personal identity and social similarity; whether responsibility is really saved by means of these conceptions, and so on. But this review already exceeds the limits assigned it.

As to the translation, the reviewer lives in a glass house.

The University of Wisconsin.

H. M. KALLEN.

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**MODERNE RECHTSPROBLEME, von Joseph Kohler.** 2te durchgearbeitete auflage. B. G. Teubner, Leipzig, 1913, pp. 98.

The first edition of this book was published in 1907, in Teubner's popular series entitled, *Aus Natur und Geisteswelt*. Though the new edition contains little new material (only one section, 27, consists of entirely new subject matter), it is in considerable part rewritten, and most of the changes are in the two chapters on criminal law and procedure. In the interests of the popular aim of the series for which this book was written, Kohler has relegated the notes to the end of the book (a doubtful blessing) and has omitted a good deal of his polemics and ornamental learning that are so typical of his vigorous mannerisms. These changes improve the expository qualities of the

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book, though the two editions have about the same amount of reading matter, the publishers have seen fit to save seven pages by closer printing. This with the thinner paper makes the reading of the second edition a real eye-strain, especially to those of us that are not born in the Gothic type.

In the first chapter Kohler gives us, besides his usual fling at Jhering (to whose *Jahrbücher* he often contributed), a succinct account of his own general philosophy and its relation to law. Law is a part of human culture (i. e., process of human development), and can be understood fully only in a philosophy which grasps the character and aim of this development. In spite of an obviously eclectic tendency which shows itself in a predilection for such diverse modes of thought as Hindoo mysticism, medieval scholasticism, Hegel and Nietzsche, Kohler's temperament will not allow any other alternatives than extreme positivism and his own pantheism. The arguments by which he establishes his position are vehement and suggestive, but not always logically convincing. Certainly the fact that positivism happens to be of French and English origin is not a scientific argument against it even in Germany. Moreover when one considers Kohler's use of history and the actual content of his legal system, one has reason to suspect that his differences with the positivists are more formal than substantial. This is particularly true of this book, and especially of his treatment of criminal law and procedure which occupies more than half of the book.

Kohler begins the second chapter in the approved German manner, with a series of elaborate arguments for free will against determinism. In spite, however, of his protestation that this is the basic problem of criminology, he does not make out a real difference between the empirical consequences of his position and those of determinism. Not only are the influences of heredity and environment admitted, and the possibility of making valid inferences from the past to the future conduct of an individual, but the whole tendency of his penologic policy is to minimize the importance of personal punishment (e. g., in the case of those we euphemistically call "cadets"), and to emphasize the preventive and meliorative functions of the state, not merely in the education of the young, but by state regulation of industry, the liquor traffic, the activity of the press, etc. His favorite penal device is such deportation as will enable the deported to begin life again under the proper conditions. Kohler's statement that the results of the Russian system of deportation to Siberia and Sakhalien are most favorable, is certainly not borne out by the best statistical information. To be sure, Kohler sharply distinguishes between the right to *punish*, based on corrective or retributive justice from the merely utilitarian idea of prevention, or even ethical help. But no necessity for this metaphysical idea of retribution is established. If we give up all utilitarian ideas of social welfare, what necessity is there that the universe should be organized like a penitentiary, on the basis of rewards and punishments? The argument that the character of sin is the basis of Christianity and of our whole cultural system is not well founded. The concept of sin is also found among the ancient Babylonians, and some

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very primitive peoples. Moreover, the notion of sin has no inherent connection with that of free will. Familiarity with penitential hymns from the days of the Babylonians, the Old Testament, down to the days of Thomas a Kempis or of Calvinism, shows that sin is not always regarded as a voluntary affair. The whole institution of sacrifice is based on the idea that sin is a more or less contagious body, with which people may come in contact and be contaminated in spite of themselves.

As observed above, the homage which Kohler pays to the metaphysical idea of retribution or atonement does not seriously interfere with his detailed views on penologic problems. Imprisonment to protect us against those who threaten our possessions is justified when these possessions are sufficiently important. The closest connection between Kohler's metaphysics and his criminology is perhaps to be found in his complacent belief that increase of crime does not hinder the progress of civilization.

In matters of criminal procedure, Kohler is an ardent admirer of English methods. His knowledge, however, of the history of English criminal procedure is not very accurate; witness his denial that torture ever formed part of English procedure. (Even down to the 19th century, torture was used to compel the accused to plead.)

Though Kohler's attitude toward continental criminal procedure is rather critical, he believes that more important than legislative changes is the adoption in spirit of two maxims, viz. (1) No one is to be compelled to testify against himself, and (2) the defense is as sacred as the accusation or investigation. Kohler is inclined to view the former as an eternal self-evident principle, as a corollary to the principle of freedom of will. But if the maxim is taken thus rigorously, there can be no justification for compelling any one whose welfare is in any way bound up with the accused to testify, or for the state to examine the private books, papers, etc., of the accused. Our own experience in this country has amply demonstrated that this principle is useful only when properly qualified. Carried beyond its proper limitations, this principle has caused infinite mischief in the form of immunity baths, etc.

Kohler's regard for the right of the accused leads him to urge that the person found innocent should not only have his actual costs repaid by the state, but should also be reimbursed for the trouble and loss sustained by the arrest and trial. He thinks it is due to the influence of capitalism that people get excited at the prospect of the state taking away the private property of an individual, but make no protest at the state taking away from an innocent person the personal right of freedom (and all that it carries with it), without any remuneration. But capitalism is hardly the root of this anomaly. It is rather to be found in the preoccupation of all our western legal system with the idea of property, witness the common law of torts as regards seduction, injury to feelings, etc.

Kohler also uses the recent discoveries of psychology in regard to the fallibility or aberrations of perception and memory, to point out the danger of pressing witnesses or parties so as to extract a full story,

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or of supposing that the agreement of two independent witnesses is necessarily conclusive as to the facts of the case or as to the falsehood of one who tells a somewhat different story.

On the question of the jury system, as in the other matters of criminal procedure, Kohler is an enthusiastic admirer of the English. Because of the difficulty of framing questions that a jury can readily and unambiguously answer by yes or no, he would seem to be in favor of general rather than special verdicts. The peculiar modifications of the jury system in states like New York, which make it a fit instrument to delay or defeat justice, are apparently unknown to Kohler. He favors the active participation of laymen in criminal as well as in trade and commercial courts, (1) to offset the one-sidedness resulting from technical preoccupations, and (2) to bring into the administration of justice the knowledge of the usual modes of thought and conduct, how people are affected by various transactions, etc. Kohler's classical philosophy will, of course, not allow him to say that the advantage of the jury system is that it makes our criminal procedure conformable not to abstract justice, but to the sense of justice of the community.

To the main objection to the jury system that it represents untrained intelligence, and therefore, unable to understand the psychology of evidence, Kohler answers that jurists are likely to overemphasize their own material (i. e., records), while jurymen may use the same caution that they employ in their daily business. Still, Kohler would have one jurist on the jury to explain legal questions, and would take certain purely technical questions, like those of psychiatry, entirely away from the jury.

The remaining chapters of the book are devoted to the problems of association or corporation law, civil procedure, and international law.

The wide ground covered by this compact little book, the distinction of the author's knowledge and insight makes it an exceedingly useful book and well worth translating into English.

College of the City of New York.

MORRIS R. COHEN.

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STRAFRECHT UND AUSLESE. EINE ANWENDUNG DES KAUSALGESETZES AUF DEN RECHTBRECHENDEN MENSCHEN. *Von Dr. Hans von Hentig*, Berlin. Julius Springer, 1914. Pp. 236, M. 6.

So broad is this book in its scope, that seemingly every causal law of crime and every aspect of the penal system as a selective process is considered. There is a wealth of historical material and information about contemporary procedure in various countries, which it is impossible to summarize within the limits of a review.

The keynote of the book is that the penal offense is to be considered as a measurement of the individual's adaptiveness to social conditions, and the question then becomes whether he can be made adaptive, or whether he should be eliminated from society. Elimination is accomplished at present by death sentence, life commitments,

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accidents, and suicides. "Suicide is the criminality of the weak-willed." Accidents are usually due to carelessness or lack of foresight. Germ elimination is accomplished by lifelong segregation or segregation during the reproductive period, sterilization, restrictive marriage laws and customs, breeding methods through which the unfit are eliminated, betterment of environmental factors, polygamy, euthanasia, and artificial hindrance of conception.

The chapter devoted to betterment by means of punishment contains much interesting material regarding recidivists, laying emphasis on the fact that because most convicted criminals are mentally incapable of forming inhibitive associations and are indifferent to bodily discomfort, therefore they remain uninfluenced by punishment and relapse repeatedly. Short terms of confinement not only do no good, but are positively harmful. Prisons and jails shelter and nourish incapables better than their natural environment, and send them out refreshed and ready for new criminal activity. Many insane and mentally defective are incapable of betterment by any means, and time and money are wasted trying to accomplish such improvement. They should be permanently segregated. Betterment for those mentally capable can be accomplished only by the gradual building up of social and moral associations and habits. Prisons may produce a person who is adapted to prison, but not to social life. The parole system for young and plastic individuals is approved, as are also institutions where a community life is lived as nearly as possible like that of the outside world. Surgical or medical treatment may be beneficial in some cases.

Assistance in crime, attempted crime, and carelessness vs. criminal motive received full treatment. Accessories to crime are definitely dangerous because of their abnormal suggestibility and because many crimes could not be committed without accessories. Jurisprudence which allows itself to be ruled by the mere coincidence which frustrates the attempted crime and neglects to take in hand the individual who attempted it, is unworthy of the name. The constitutionally careless are probably as unimprovable as the constitutionally criminal, and the results of their acts are practically the same.

Physical and chemical influences, such as light, temperature, narcotic and stimulating drugs have deleterious effects upon persons of lessened resistance. Light and rising temperature up to a certain point have exciting effect, therefore early summer is most productive of crime. The consumption of alcohol rises then. Drunkenness is more an expression than a cause of mental incompetence; few cases develop except on the basis of a psycho-neurotic disposition. Short imprisonments or fines for drunkenness are worse than useless. Drunkards should be treated very early by regular life, fresh air, work and lack of mental friction.

The most dangerous criminals are those who are not caught, or are not convicted when tried. Probably not more than a fifth of all criminals are brought to trial, and a large percentage of those tried are not convicted. Some escape through intelligence, being keen-witted, though morally defective; others through money, which liter-

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ally covers a multitude of sins. Much discussion is given to the foolishness of fines, which are no punishment or deterrent to the rich, and which the poor cannot pay.

The author deplores the slight knowledge of psychology and psychiatry possessed by those having to do with criminal procedure. It is this, primarily, which makes the penal system so poor an instrument of proper selection. An error in legal interpretation will seem worse than the non-detection of a criminal, or the non-punishment of a known but influential one.

The problem of the economic and social status of the wife and children of the convicted criminal is usually considered a complicated and deplorable one. Dr. von Hentig, however, takes it up from a rather new point of view, and shapes biology and history to bear on his *laissez faire* theory. Though the man woos, the woman is always free in her selection. If through lack of judgment she makes a selection which leads her into trouble, it is only because of her lack of judgment that misfortune has befallen her, and persons with lack of judgment may safely be allowed to undergo natural elimination. The children probably are tainted from both sides of the family. Better let them go, also. If the lack of judgment, and hereditary taint, by any chance are not present, the individuals will, in spite of all hardships, regain their social and economic status. All this we may be permitted to take with a good-sized grain of salt. He also says that orphans so often turn out badly, not because of lack of good training, for the training they get in institutions is often better than what they would have received at home, but because they must be of poor stock or the parents would not have died so early.

All through the book, charts, tables and copious notes illustrate and amplify the text. While some rather sweeping statements are made concerning the psychology of suicide, for example, on the whole the book is unusually good, absorbingly interesting, and a real, and in some ways an original contribution to the science of criminology.

Ann Arbor.

MRS. JOHN F. SHEPARD.

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EUGENICS RECORD OFFICE, REPORT No. 1 (1913), AND BULLETINS No. 10A AND 10B, by *Harry H. Laughlin*, from the Committee to study and report on the best means of cutting off the defective germ-plasm in the American population. By *Harry H. Laughlin*, Cold Spring Harbor, New York, 1914. Pp. 64 and 149.

Enthusiasts in every line are likely to magnify the importance of a hobby, and to minimize everything which tends to demonstrate contrary facts. This is unfortunate, for others realizing the importance of the adverse facts may go to the opposite extreme. This is excellently shown in the operation of eugenic agitation, where the science is abused on the one side by its friends, and on the other by those who pose as opponents. Realizing that all nature teaches that like tends to beget like, and observing, for example, that sons of criminals frequently become criminals, amateur eugenists demand the sterilization

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of criminals. On the other hand, in his message vetoing the Pennsylvania sterilization act, Governor Pennypacker truly observes: "Scientists, like other men whose experiences have been limited to one pursuit, and whose minds have been developed in a particular direction, sometimes need to be restrained. Men of high scientific attainments are prone, in their love for technique, to lose sight of broad principles outside of their domain of thought." He then runs to the opposite extreme and asserts: "Idiocy will not be prevented by the prevention of procreation among these inmates," and much of his message does not harmonize perfectly with known facts.

Radical action should be based upon demonstrated facts, rather than upon theory or impression, especially when the action involves legislation. Legislation wisely formed is an aid to progress; legislation which is essentially wrong retards progress, and arouses opposition. Amateur enthusiasts have lately been rushing to the legislative bodies with all forms of half-baked ideas. It would be well if all pondered over John G. Saxe's fable of the six blind men who went to see the elephant, and that legislative efforts be restrained until the ground shall have been carefully surveyed.

What is desired from the Eugenics Record Office is a demonstration of *facts*. The facts so far published are certainly sufficient to warrant legislation to provide for further investigation; but it may be seriously questioned if the office has as yet demonstrated sufficient evidence to warrant the advice which it gives for sterilization. According to the rules of science, all possible factors must be considered. Apparently the office seems content with simply showing the reappearance of the same trait in successive generations. It is recommending radical operations on *a priori* reasoning, and on "feeling" generated in hearsay evidence. We well remember when it was universally thought that malarial fever was the product of some miasm; now it has been proven that it is the result of an animal parasite which is developed in a certain genus of mosquito. It is with surprise that we read in Bulletin 10A the apparent indorsement of the words of Havelock Ellis: "Moreover, the attitude of society toward the individual criminal and his peculiarities must be to some extent determined by our knowledge of criminal heredity. The hereditary character of crime, and the organic penalties of natural law, were recognized even in remote antiquity." Mr. Laughlin admits that "A biologic, psychologic, or genetic analysis of criminalistic persons better suited to eugenic studies is up to the present time lacking;" yet, in the place of making such a critical analysis we find the office advising sterilization. "From a moral, social and religious, as well as from a biologic and legal point of view, the program of segregation and sterilization is, the committee feels, justified because,"—and the reasons are academic, rather than scientific. The third reason given is "(C) The consent of the inmate (or his guardian) to the necessary operation can often be secured, thus relieving the state from imposing upon an individual, even though he be defective or insane, who may, because of such operation, bear some resentment against society."

The idea that a supposedly scientific committee should advise such

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a radical operation, before it has made a critical study of the facts, and that it should do so on a "feeling" *because* an unfortunate individual, admittedly not in possession of full mental poise, can be persuaded to give his consent to the operation is preposterous.

Just a few years ago the southern states were the home of many people of very low mental development; lazy, shiftless, and to a greater or less degree public charges. Missionary efforts did not seem to help. In the light of the knowledge of a dozen years ago they were evidently cacogenic, and needed to be suppressed. Now it is known that by killing the blood-destroying hookworm these individuals are made self-supporting, energetic and intelligent members of society. A fine piece of mechanism may more easily be ruined than one of coarser construction; but the fineness is necessarily for the work to be done, and the destruction is not due to the inherent character of the machine. Just so, though insanity may be based upon the heritable character of the brain, the breakdown is due in probably every case to some extraneous cause. The problem for the Eugenics Office is to determine how much is due to heredity, and how much is the product of environment.

The Report No. 1 gives a bird's-eye view of the mechanics of the service, tells of the training of field workers, and their use. Bulletin 10A gives the report of the committee, which advises segregation and sterilization, after a few outline remarks, but without adding anything to our previous knowledge. Bulletin 10B seems the most valuable of the three pamphlets mentioned. It contains an analysis of the sterilization laws, considering those enacted, vetoed, or failed of passage. The text of veto messages, and opinions of legal authorities upon enactments are given, with the decision of cases which had occurred up to the time of the publication of the Bulletin. The committee also presents the draft of a model law.

Three motives are recognized as possible excuses for sterilization: eugenic, punitive and therapeutic. The committee casts aside as unworthy of consideration punitive sterilization, and the use of the operation for therapeutic purposes is without the scope of the investigation. Having cast aside punitive operations, unless it be shown that criminality is *per se* hereditary, it would seem that there would be no rational excuse for the operation among those distinctly criminal. Since criminality is essentially an ethical problem, and dependent apparently upon a lack of moral education, we should not expect it to be transmitted in the germ plasm. However, before digging for the foundations, the committee has seen proper to begin to erect the superstructure, to tell in a general way who should be segregated and sterilized, what legal steps should be taken, and it even presents in tabulated form an estimate of the amount of operating which will need to be performed in order to reduce the dependent class to a fraction of one per cent by 1980, and to a minus quantity in the next five years.

Several pages are devoted to a discussion of the subject, "The viewpoint as to the import of sterilization, whether it be held to be within police regulatory powers, or whether it be deemed of sufficient consequence to require in each case, due process of law." The constitution of the United States guarantees the protection of "due process



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of law" to all, and it makes no exception of the use of police power. If under summary use of police power the hearing be not afforded before the operation, all concerned are liable to the injured party in such damages as may appear. On the other hand, if the operation be not performed under police power, and we do not use it as a punitive measure, it does not appear by what possible authority the state may interfere. From a legal point of view, therefore, the topic seems meaningless, though the committee "feels" that "compulsory eugenic sterilization should be authorized only as a result of due process of law."

Some of the sterilization laws provide for the operation in such cases as show no hope of improvement. The committee wisely says, "Hereditary traits are dependent upon ancestry, and do not rise and fall in value with the condition of the individual."

It must be remembered that the work of this particular committee pertains only to the negative phase of eugenics—the cutting off of the undesirable blood-plasm. Unfortunately, the emphasis recently placed upon this phase tends to becloud the greater subject of positive eugenics. We must express the "feeling," (to use the committee's expression), that such reports of the committee will tend to intensify opposition and ridicule for the entire subject. From a scientific point of view the report shows more of the partiality of a narrow specialist, than of the critically scientific study of men with broad experience and observation. If, with the exceptional opportunities of the Eugenics Record Office, the committee is unable to formulate an answer to the scientific questions involved it is evident that others should not be expected to make the answer. It therefore follows that without knowing definitely what is to be attempted in a scientific manner, all discussion of the legal phase of the matter is premature.

Evanston, Ill.

HENRY B. HEMMENWAY.

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AMERICAN STATE TRIALS, VOL. I. *John D. Lawson*, Editor. F. H. Thomas Law Book Company, St. Louis, Mo., 1914. Pp. 857.

This is the first of a proposed series of twenty volumes to cover, as the title shows, a record of the noteworthy American criminal trials. There is no such work nor any approaching it in this country. The purpose is to produce a set which shall rank with "Howell's State Trials of England" (which has been continued since 1830 under the title, "State Trials," by governmental authority), and "*causes celebres*," of France. The well known ability of the editor bespeaks success for the venture. The first volume corroborates the prediction. If the painstaking care of editing and wisdom of selecting cases is continued through the series, the result will be a distinct addition to the literature of the nation. We confidently expect the editor to show wisdom not only in the selection, but perhaps what is more important, in the exclusion of cases from his list. The series should, and no doubt will, be limited to cases which are distinctive and will exclude all those cases, however prominent the parties, or general the temporary notoriety, which are, however, only typical of the ordinary trial for the offense charged.

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The character of the work is best shown by reference to some of the cases selected for the first volume.

The trial of Bridget Bishop and George Burrows for witchcraft will dramatically impress one with the havoc this illusion wrought. It seems to us impossible that persons of standing and intelligence could be executed as witches because of the existence of a mole upon the body, an inability to recite the Lord's prayer correctly, an inability to shed tears upon command, and similar *non sequitur facts*, but the conviction and execution of these defendants shows the fact.

The case of Tully and Dalton for piracy and murder, in addition to rather remarkable arguments, shows a most remarkable dissertation by Judge Story in pronouncing sentence.

The trial of Jacob Gruber for inciting slaves to rebellion is especially notable. The charge was based upon a sermon preached by the defendant in Washington County, Maryland, against slavery. The prosecuting attorney was Luther Martin, the attorney general of Maryland, who had formerly been counsel for the defense in the impeachment trial of Judge Chase and the treason trial of Aaron Burr, and was attorney for the State of Maryland in *McCullough vs. Maryland*. The defendant was represented by Roger B. Taney, who years later became chief justice of the United States. Much discussion has taken place as to the views of Judge Taney on slavery. It is noteworthy that in this trial defending the right of free speech, however much it may offend slavery, in a locality much inflamed against the defendant, Mr. Taney showed himself the high minded lawyer just as years later in following his logic to an unpopular result, he showed himself a just judge.

The case of Holmes, for manslaughter, for the negligent handling of his vessel resulting in collision with an iceberg, and the death of many of the passengers and crew, is made of present interest by the Titanic and Empress of Ireland disasters.

The trial of Vallandigham for disloyalty was probably worth recording, although it is a question whether the performances of that erratic character should be further dignified by historical mention.

The trial of George Bowen for murder in persuading a fellow convict to commit suicide, and the argument is interesting. One's professional interest in a curious problem almost leads him to regret that the jury robbed the case of the interesting question, by finding that the suicide was not the result of the defendant's advice.

It is to be hoped the series will fulfill the ambitions of the editor.

Wausau, Wisconsin.

C. B. BIRD.

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DREISSIG JAHRE DEUTSCHER KRIMINALSTATISTIK. Von Landgerichtsdirector a.D. Geheimen Justizrat Dr. Aschrott, in Berlin. Zeitschrift für die gesamte Strafrechtswissenschaft. Fünfunddreissigster Band, Fünftes Heft. Pp. 507-533.

Dr. Aschrott seeks in this article to present to the reader some of the most important facts which his study of the thirty reports on

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German criminal statistics, the last of which has just appeared, has brought to his knowledge.

I have read other studies of these self-same statistics which were more comprehensive and more learned; but Dr. Aschrott has succeeded within the space of a few pages, in stating a number of very interesting facts regarding the tendencies and changes in German criminality, and this, I take it, was in the main his purpose.

Some of the most important of these are:

1. A great increase in the number of sentenced criminals. This is not only an absolute increase, but an increase in proportion to population.

2. This increase is due to an increase in the number of male criminals, the number of female criminals having decreased.

3. The number of juvenile offenders has swollen enormously; and again it is the male sex which accounts for the increase.

4. One of his most important conclusions, it seems to me, is that the increase in the number of sentenced criminals can, for the most part, be explained by reference to the increased recidivism.

5. The crime of injury to the person, fraud, embezzlement, failure to obey industrial laws, force and threats, insults, crimes against morals, food crimes and forgery all show an increase.

5. Theft has decreased. In 1882, this crime constituted 32.6 per cent of all the criminality; while in 1911, it amounted to but 20.3 per cent.

6. In 1882, the crime of bodily injury constituted 18 per cent of the criminality; now it amounts to 22.1 per cent. This is the crime which shows the most remarkable increase.

7. There has been, during the thirty-year period, a shift in the kind of penalty imposed. The change has been from imprisonment to fines; and there has also been a decided tendency to send fewer persons to the penitentiaries. How great the change from imprisonment to fines has been can be seen easily from a comparison of the figures for 1882, and those for 1911. In the former year 73.6 per cent of all the sentences called for imprisonment, whereas in the latter year the sentences to imprisonment made up only 47 per cent. Dr. Aschrott says that the judges, with the exception of those in the South, inclined to milder punishments. There is an absolute decrease in the number of those sent to the penitentiaries. The length of sentence is also growing shorter.

8. Less and less use is made of the additional penalty of loss of civil rights. Indeed, so far as the women are concerned, it has become a negligible item. Moreover the tendency seems to be to place fewer criminals under the oversight of the police.

In general, these facts presented by Dr. Aschrott correspond to those which can be found in the writings of others. Two points call for attention. The increase in juvenile delinquency and recidivism emphasize the fact that the prevention of crime is largely a matter of the proper treatment of young offenders, or rather of providing such environment to the young that they will not offend against the laws of their country.

Swarthmore College.

LOUIS N. ROBINSON.

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**REPORT OF THE SPECIAL COMMISSIONER ON THE ALIEN INSANE IN THE CIVIL HOSPITALS OF NEW YORK STATE.** By *Spencer L. Dawes, M. D.* J. B. Lyon Co., Albany, 123 pages.

The advocates of new and more drastic legislation to control the quality of the vast numbers of immigrants landing daily at our ports could scarcely have brought forward a more telling bit of evidence in its favor than that embodied in the "Report on the Alien Insane in the Civil Hospitals of New York State," submitted last January to Governor Glynn, by Dr. Spencer Dawes, special commissioner on the alien insane.

The evidence gains force from the fact that the report does not deal primarily with the immigration problem, but with the problem of lessening the burden of insanity in New York State, which problem it attacks through the special problem of the alien insane.

The committee gathered its data at public hearings at the various state hospitals and at the cities of New York and Albany, where all persons directly connected with the problem were interrogated; and also by a study of statistics of the nationality and citizenship of every patient in the New York State Civil Hospitals, as given by a special census taken in September, 1912.

The report presents the actual numbers of the alien insane; it points out the causes which make these numbers disproportionately large, and it suggests measures designed to relieve the situation.

It is rather a startling commentary on existing legislation to find that, although the Immigration Act calls for the exclusion of all insane, idiots, imbeciles, and feeble-minded persons, in September, 1912, the foreign born constituted 43.4 per cent of the insane in the New York State hospitals, 29 per cent being aliens. Moreover, of all admissions during the eight years from 1905 to 1912, inclusive, 44.5 per cent of admissions were foreign born, 69.2 per cent were of either foreign or mixed parentage, and 30.5 per cent were aliens. To understand something of the import of these figures, they should be compared with the ratio of foreign born to native born, and with the ratio of those of foreign and mixed parentage to those of native parentage, in the general population of the state. The report states that 30 per cent of the general population was foreign born, and 62.9 per cent of the general white population was of foreign and mixed parentage. Thus the per cent of foreign born insane was 13.4 per cent greater, and the per cent of the insane of foreign and mixed parentage was 6.3 per cent greater than the corresponding groups in the general population of the state. These figures show conclusively that the foreign element in New York State is contributing decidedly more than its share to the insane population.

Further figures are given to show the numerical relation of the New York State foreign population, and also of its insane charges to the corresponding United States groups. While New York State has but 9.9 per cent of the total population of the United States, it has 20.4 per cent of its foreign population, 17.8 per cent of the total of those of foreign birth and of foreign and mixed parentage, and 16.7 per cent of the total insane; 9.9 per cent of the total population, 20.4

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per cent of the total foreign population; 9.9 per cent of the total population, 16.7 per cent of the insane. These figures also seem to indicate that the foreign element in New York has much to do with its large number of insane.

The report contains a detailed statement of the cost to New York of the care of its insane. In brief, the net expenditure during 1912 for the care of the citizen insane was \$4,751,352.56, at a per capita of \$212.27, while that for the alien insane was \$2,108,688.05, at a per capita of \$228.19. Though the citizen insane numbered 2.4 times the alien insane the net expense for the former lacks \$309,498.76 of being 2.4 times as great. This is accounted for by the fact that a greater number of citizen insane contributed toward their own maintenance.

The limitations on the deportation of alien insane imposed by the present Immigration Act leaves so many insane aliens in New York whom it is quite possible to return to their homes that the state has devised a way of returning them. The Bureau of Deportation sends to their homes at the expense of the state, those alien insane who will consent to return, and whom the Federal Government refuses to send. When necessary, it sends an attendant with them, and provides for their return to their home city. The bureau has been remarkably successful in securing the consent of many aliens, so that more are actually returned by this method, which is called repatriation, than by deportation by the Federal Government. The expenditure of the Bureau of Deportation for the year 1912 amounted to \$46,939.24, for which sum 1753 aliens and non-residents were sent to their homes, a per capita net cost of \$26.77. The successful work of the bureau is remarkable because all the business, both with the aliens and with the steamship companies, is accomplished without the aid of state or national legislation. The report urges that the state be generous in its appropriations for this purpose, as many more aliens could be repatriated was the money available.

The records show that up to the present time the average length of time spent by an alien in a state hospital is 9.85 years. Calculating the expense of support for this length of time, of the number of aliens in the state hospitals in September, 1912, it amounts to \$25,412,038.44. Comparing the expense of repatriation with these figures, it seems clear that it is good economy for the state to repatriate the maximal possible number of alien insane. The saving for one year is enough to justify the method, but when this is multiplied by 9.85, we gain some idea of the saving to New York State in spending freely on repatriation.

The section on causes of existing conditions is very illuminating. The first one mentioned is that while the bulk of the burden of the alien insane is borne by the several states, all power of limitation and regulation of immigration lies with the Federal Government. The result is that a government which contributes but \$8,290.57 where a single state contributes \$2,579,902.38 to the support of its aliens, a government which collects a head tax of \$4.00 for each immigrant, and spends but a few cents on the entrance examinations of each one, has

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little practical inducement to relieve the situation. Next are mentioned a group of causes inherent in the Immigration Act. First among these, failure to exclude those who have been previously insane, chronic alcoholics, and constitutional psychopathic inferiors. These three groups of persons contribute largely to the alien insane in the New York hospitals. Another fruitful cause is the limitation of the deportation period to three years; statistics show that 70.4 per cent enter the hospitals more than five years later than they enter the United States, and only 19.4 per cent enter the hospitals within three years of landing. The report considers that the time limit should be increased to five years or altogether stricken out. Moreover, an insane alien is not subject to deportation unless he has become a public charge. This is a discrimination in favor of the richer alien insane, who eugenically are just as great a menace; while it also results in the care of the poorer aliens by friends until the three-year period expires, after which time the state is compelled to care for them. If the insane alien becomes a public charge within the three-year period, the condition of deportation is that the state prove his condition to be the result of causes existing prior to landing. As the state is often unable to procure evidence relating to conditions existing prior to landing, it would be more rational to state the condition in the following way: such an alien must be deported unless the causes of his condition arose subsequent to his entry into the United States. As the last word in the deportation of an alien insane lies with the Department of Commerce and Labor, and as expert medical opinion has been found of no avail in the effort to prove an early cause, this change would overcome many difficulties. More equitable decisions would also result if when the Department of Commerce and Labor question the advisability of a deportation advised by a state, such state be allowed to hear the opposing evidence, and to present additional evidence if it so desires.

A very real cause of the admission of so many mentally inferior immigrants is the inadequate examination they receive. The steamship companies are held responsible, and are fined \$100 each for all idiots, imbeciles, epileptics, persons afflicted with tuberculosis or a loathsome or dangerous, contagious disease, brought into this country. Strange to say, no fine is imposed for insane or feeble-minded persons, although they are excluded by the Immigration Act. The examinations conducted by the steamship companies is cursory in the extreme; the British immigrants are examined on the barge carrying them to the ship, at the rate of 7 to 20 per minute, while the Italian immigrants are examined at the rate of 2 to 6 per minute, the mental examination being merely incidental to that for physical disease. At Ellis Island the tremendous daily pressure of immigration makes the task of adequate examination an almost impossible one. For the last ten years the immigration to this country has averaged 900,000 per year; as many as 80,000 have reached New York in a single month, and sometimes four or five thousand per day arrive for several succeeding days. Those cases of mental defect which can be detected in a rapid inspection are set aside for further examination; those which

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cannot be so detected are admitted and later apparently find their way in goodly numbers to our hospitals for the insane. The steamship companies are willing to take the chance of passing in defective immigrants, and to risk the fine of \$100. It is suggested that the fine be raised to \$200, and that it be applied also to insane, feeble-minded, chronic alcoholics and constitutional psychopathic inferiors.

The suggestion that the prevalence of insanity among aliens is due to the abrupt change to a strange environment is discussed. Although the effect of the environment is recognized, it is noted that many, if not the majority of authorities believe that mental breakdown occurs as the result of stress of existence only when such stress is borne by an individual already predisposed to insanity, an individual with an inherited weakness or fundamental defect of makeup. In a study of the incidence of the various psychoses, paresis and alcoholic insanity occur relatively more frequently among the foreign born than among the native born. As paresis is generally attributed to syphilis, and as the condition does not as a rule develop until five years after the original lesion, its frequency furnishes a tangible argument in favor of increasing the length of the possible deportation period.

The report emphasizes not only the present economic effect of admitting mentally defective aliens, but calls attention to the fact that the effect on future generations will be still more serious. It states that modern investigators "assure us that heredity is by far the most important single factor in the causation of certain forms of mental disease," and that investigation justifies the statement "that it is highly undesirable that feeble-minded, epileptics, and those with certain types of insanity should have children. It is patent, therefore, that both the insane, the mentally defective, and those particularly likely to become insane, who are so undesirable as parents of future generations of Americans should be excluded, so far as possible, from entry into this state or country. If, however, they have been admitted and have not become citizens of this country, they should be returned to the homes from which they came."

The value of this little pamphlet can hardly be overestimated. As the danger to this country of allowing its mentally defective classes to increase at the present rate is incalculable, such precise documentary evidence of one source of increase is invaluable. We most earnestly second the plea that such investigations be continued in New York, and undertaken in other states. We feel that the whole country owes a debt of gratitude to New York State for its wisdom in initiating the work of repatriation, by which it has so effectually reduced the number of alien insane.

Lincoln, Illinois.

CLARA HARRISON TOWN.

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REPORT OF THE CIVIL SERVICE COMMISSION OF THE CITY OF CHICAGO.  
PRISON LABOR AND MANAGEMENT; HOUSE OF CORRECTION. By  
*Messrs. Campbell, Lower, Flynn*, 1914. Pp. 66.

At the meeting of the city council of Chicago on December 8th, 1913, an order was presented by Alderman Charles E. Merriam and

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was, on motion, duly passed, which directed the Finance Committee to investigate the use of convict labor at the House of Correction, and to recommend appropriate measures for the relief of the disgraceful conditions then prevailing.

The Finance Committee asked the Civil Service Commission for information. The commission reported in full, on March 14th, 1914. The report goes into detail concerning the organization, the management and the labor situation in the institution. Some excellent results have already been brought about, and steps are being taken to have several other recommendations of the committee adopted. Mr. John L. Whitman, the superintendent, is commended for his earnestness and efficiency in the general control and direction of the penal work of the institution, but on the other hand the report sets forth the faults in the statutes, the organization, the management and the control of the inmate labor of the institution. The report is well written and is valuable for anyone who wishes to know the exact situation existing in the House of Correction of Chicago. The ground covered by the report is:

- (1.) Statutory provisions and city ordinances.
- (2.) Organization of institution.
- (3.) Management of institution.
- (4.) Methods, systems and records.
- (5.) Population—prisoners and inmates.
- (6.) Housing, sanitation, medical care and welfare.
- (7.) John Worthy School for Boys.
- (8.) Contract prison labor.
- (9.) Extension of municipal industries—farm colony.
- (10.) Prison labor and industries:
  - (a) Contract and piece price system.
  - (b) Municipal use system.
- (11.) Conclusions and recommendations.

The most important recommendations are:

1. That action be taken so that bills be presented to the next legislature providing for an amendment to the statutes abolishing the offices of the board of inspectors, and placing the responsibility for the management and the direction of the House of Correction definitely on one official to be appointed by the mayor, with the consent of the city council.
2. That the system of contract labor be abolished.
3. That the various department heads of the city use prison labor and the products manufactured in the House of Correction, as far as possible.
4. That consideration be given to a plan to pay the longer-term prisoner; the money earned to be given to the prisoner at the time of his release or else to his family during the period of his incarceration.
5. That the city give consideration to the question of providing



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a farm to which inmates of the House of Correction could be sent to work.

The other recommendations have mainly to do with the organization and management of the institution.

As a result of the report, the city council passed a resolution, on March 30th, 1914, which provided for the termination on May 1st, 1914, of the contracts with the three companies for which the House of Correction had been supplying labor, and also ordered the abolition of the contract system of labor. The city council ordered the various department heads of the city to use every means possible for the utilization of prison labor and the products manufactured at the House of Correction, and that the other recommendations in the report be considered by the Committee on Finance, with a view of putting them in effect as far as practicable.

Because of its contents, and because of the results achieved, this report is worthy of careful study.

Chicago.

JOEL HUNTER.

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CODE DE L'ENFANCE ANNOTE (Belgian). By *Edmond Picard*, G. Dansaert-de Baillencourt, and Arthur Oliviers. Bruxelles, 1913. Pp. 420.

This is a strikingly useful little book, not only as a summary of Belgian laws relating to children, but as an essay in comparative legislation. It covers practically every phase of the problem of childhood, including laws ministerial orders for the protection of childhood, for juvenile courts and probation, apprenticeship, prosecution of cruel and immoral parents and others who commit crimes against children; also laws concerning the civil rights of minors; property, marriage, divorce, guardianship, adoption, wages, legitimation, nationality, and the common rules of procedure covering such questions; laws regarding infanticide, abortion, abandonment; finally such miscellaneous laws as pertain to the army, public charity, savings banks, child labor, prostitution, drunkenness, vagabondage, and midwifery as they bear upon minors. Its method is even more comprehensive, especially in the sections relating to the protection of children. After citing the law, the authors add references to the Belgian constitution, to the codes, to ministerial circulars, to commentaries on the codes, to treatises on constitutional law and other legal topics, and to foreign legislation. For example, the section dealing with *Le Juge des enfants* carries with it three references to legal treatises, as many to Belgian laws, and references to laws of Prussia, England, Austria, Denmark, Egypt, Spain, France, Hungary, Italy, Russia, Sweden, Switzerland, and twenty-seven of the United States. The section on probation *mise en liberté surveillée* is even more abundantly annotated. Not the least important part of the book is the selected list of organizations and institutions, public and private, concerned with problems of child welfare. Those which caught the reviewer's special attention were the creches, the committees

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for the defense of juvenile delinquents, the societies for protection of abnormal, idiot and insane children, societies for prevention of cruelty to children, (*Oeuvres des enfants martyrs*), *Consultations de nourrissons*, and *Soupes scolaires*. The authors are to be congratulated on having produced a work which cannot fail to be of great service to workers for children. Their dedication of the book of Madame Henry Carton de Wiart, wife of the Minister of Justice, and herself a leader in the work for neglected childhood, indicates that they were prompted by a high purpose, which their patient scholarship has enabled them to accomplish.

University of Pittsburg.

ARTHUR J. TODD.

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**PRISON LABOR IN GOVERNORS' MESSAGES, 1912-1913.** Prison Labor Leaflets No. 8, National Commission on Prison Labor, New York, pp. 101. 25 cents.

Prison Leaflet number eight has grown into a pamphlet of one hundred and one pages. The Leaflet is composed of those passages in the Governors' Messages for the years 1912-1913, which bear on the subject of prison labor. The size of the pamphlet indicates the interest that is being manifest in this subject throughout the various states. During the year 1913 this question received attention in some form by the governors of thirty-six states.

The topics treated by the various governors are classified in this pamphlet into five main subjects: administration, employment of prisoners, punishments, measures for reform, and disabilities as a result of imprisonment. Under administration such questions as reorganization and increased efficiency of the boards of control, elimination of politics from the administration of penal institutions, per capita costs of prisoners and the improvement and care of women prisoners and first offenders are given the principal attention. Improvement in the care of county and city prisoners receives attention in seven states.

On the subject of employment two things stand out prominently. First, that the use of convicts on a state farm is gaining wide recognition as a useful and desirable method of dealing with criminals. This matter received consideration in fourteen states. Second, that work on public roads is regarded as one of the most useful ways to employ the criminals of the state. This method of use was recommended in twenty-four states. In addition to these questions, the abolition of contract and lease systems in favor of state use in some form was recommended in a number of states.

The question of reform measures calls forth proposals concerning reformation, industrial education, grading of prisoners, honor system, the payment of earnings to the prisoner's family, etc. The social responsibility for assisting the unfortunate members of society is clearly recognized and expressed. Likewise the responsibility of

## REVIEWS AND CRITICISMS

protecting society against the recurrence of subnormal individuals through hereditary influences is recognized, and sterilization is recommended in three states.

This Leaflet is a very useful source of information, showing the trend of public opinion on this very important social problem.

F. S. DEIBLER.

Northwestern University.

# Journal of

the American Institute of

# Criminal Law and Criminology

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# Journal of the American Institute of Criminal Law and Criminology

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## EDITORIALS

### NEWS FROM DR. VICTOR VON BOROSINI.

The editorial staff of this Journal for several months has been painfully conscious that a strong portion of its force is away from the desk. Dr. Victor von Borosini, who for several years has been an especially active and energetic associate editor and contributor, went to Europe early in the past summer, and, at the outbreak of the European war, entered the Austrian army. From October 25 to December 4 he had not been heard from and his friends were consequently filled with anxiety. News has reached us, however, that he is safe, but that he is a prisoner of war. This is occasion for mixed feelings on our part. At the same time that we congratulate Dr. von Borosini and his anxious family on his personal safety, we deeply sympathize with him in the enforced idleness and hardships of a prison camp. He will rob a portion of the days of their tedium by reviewing books and journals for our pages.

Those who may wish to communicate with him should send mail in care of Director of Bureau of Prisoners of War, 49 Wellington St., London, W. C. From that office mail will be forwarded to the prison camp near Tipperary, Ireland. ROBERT H. GAULT.

### "SOCIAL HYGIENE."

The first number of "Social Hygiene" appeared in December. This issue contains 164 pages. The journal is published quarterly by The American Social Hygiene Association, Inc., and is under the editorial care of James Bronson Reynolds Esq., general counsel of the American Social Hygiene Association and Dr. William F. Snow of New York City. The workmanship on this first number justifies the term "artistic," and the titles and names of contributors promise good things. The table of contents follows:

The American Social Hygiene Association.....Charles W. Eliot  
The Fight for a Red Light Abatement Law.....Franklin Hichborn  
Can the Law Protect Matrimony from Disease?.....

.....Edward L. Keyer, Jr.  
The Regulation of Prostitution in Europe.....Abraham Flexner  
Education and the Social Hygiene Movement.....G. Stanley Hall  
Play Leadership in Sex Education.....Clark W. Hetherington  
The Bionomics of War.....Vernon L. Kellogg  
Diagnosis and Advice in Venereal Diseases.....

.....B. S. Barringer, Archibald McNeil

## PREVENTING THE DEVELOPMENT OF CRIMINALS

- The Interest of Life Insurance Companies in Social Hygiene... Lee K. Frankel  
The Relation of Education in Sex to Race Betterment... Winfield S. Hall  
Report of the Committee on Prostitution, of the National Conference of Charities and Correction... Maude E. Miner  
In addition to the above contributed articles there are notes and reviews of books and periodicals.

Correspondence for the new journal should be addressed to  
105 W. 40th St., New York City. ROBERT H. GAULT.

### • PREVENTING THE DEVELOPMENT OF CRIMINALS.

There is much in our methods of dealing with criminals to suggest an old woman with a broom sweeping back the rising tide of the ocean. In the Chicago House of Correction there are approximately 1,200 prisoners who have been committed to that institution, or to others of its kind, four or more times. During the year 1913 there were 2,171 different repeaters in that institution who had been there four or more times before.

In his review of the statistics of recidivism in Germany Gustav Aschaffenburg says: "Probably with the first, certainly with the third or fourth conviction, the hope is destroyed of ever reclaiming the criminal from his unfortunate career; finally they (statistics) teach that the fall into the abyss usually takes place in a very short time, and that our penal system is unable to check the growing depravity." (See *Crime and its Repression*, p. 223.) Dr. Paul Bowers' study of 100 recidivists who had served four or more terms of commitment in the Michigan City, Indiana, prison, would indicate that they were all in very bad mental and physical condition. (See this *Journal*, Vol. V, No. 3.) The Chicago Council Committee on Crime is in possession of similar data relating to juvenile and adult delinquents in Chicago.

There is sufficient data at hand to establish the conviction that oft-repeated offenders are on the whole equipped with such unstable organizations that they cannot react normally to the conditions of everyday life that place upon us all the heavy burden of competition for a livelihood—and more. If this is the case the corollary seems to be obvious that we are not preventing crime by merely locking such repeaters up and letting them out again. They require prolonged attention and this seems to suggest giving

## PREVENTING THE DEVELOPMENT OF CRIMINALS

authority to medical staffs, or to courts on the recommendation of medical staffs, to commit to farm colonies or to hospitals those who are found to be in such unstable condition that they cannot at once adapt themselves to the conditions of normal social life, and to keep them in such places of benevolent confinement until cured. When we adopt such a policy as this toward the youth of the land we will take a real step in the direction of the prevention of the development of criminals—and that should carry a distinct appeal to the imagination of our age. Why, at any rate, should any youthful delinquent, and therefore, criminal in the making, while he is neurotic, or mentally subnormal, or the victim of destructive infections be admitted to the freedom of probation, or be placed on parole from an institution, in which state he will, in all probability, have placed upon him burdens too heavy for him to bear? Why should not the state or the city protect its own resources by assuming responsibility for doing all that can be done toward giving such youths an equal start in life as far as physical and mental equipment are concerned, even if that responsibility must be expressed in keeping these youths in suitable institutions, where they can have, during whatever term may be needful, such medical and educational treatment as may be best suited to individual cases? This would be a strictly logical procedure, once we agree that the state and the municipality have an educational function to perform, for the educational process involves, among other things, the arrangement of conditions in which adjustment may be effected; and among these conditions is a reasonable degree of health; at any rate freedom from such infections and neurotic conditions as render normal behavior-responses to the social environment improbable.

We publish elsewhere in this issue an article by Dr. V. C. Vaughan in which he sets forth the relationship between crime and disease. The remedy he prescribes may be interpreted as an attempt at the prevention of the development of criminals; as a recognition of what we have tried to express above: viz., that the responsibility of the state is for the education of its members, and therefore for assisting to establish the conditions that make education possible.

Some such arrangement as that proposed by Dr. Vaughan, together with an adequate support by states, cities and towns, of departments of investigation, or child study bureaus, in connection with the educational system, should go far toward pointing out



## PREVENTING THE DEVELOPMENT OF CRIMINALS

those persons in whom delinquency is most likely to develop, and to enable us therefore to apply prophylactic measures at the most opportune times and places.

The prevention of the development of criminals is the purpose of a movement that has been inaugurated in the New York City Police Department by Police Commissioner Arthur Woods. The policemen on their beats are to make notes relating to a variety of circumstances that they observe among the people, men, women and children, on their respective beats. Data on the employment or unemployment; the habits of life; the health of the people and the nature of the homes and the surroundings in the midst of which they live, and other data which comes incidentally within the ken of every observing policeman, will be placed in the hands of a bureau at police headquarters where it will be reduced to scientific order.

Such an arrangement as this should be of infinite service to organized charities, affording, as it would, a source—and it could be made a reliable source—of information regarding conditions which it is their function to alleviate. If such a system of collecting sociological data were made efficient it would wholly remove the difficulty that we experience in our American cities of discovering at once where the points of need are, and assist us materially, therefore, to prevent many delinquent acts that are prompted by desperate circumstances. Thus we would prevent many a first step in the development of the criminal.

When we combine public measures for protecting health and correcting deep seated disorders of the nervous organization which make unreliable conduct almost if not quite inevitable, with the activity of such organizations as the police in our large cities, to place needed sociological data in the hands of proper authorities, we shall take a long step in the direction of preventing the development of criminals.

ROBERT H. GAULT.

## A BILL TO REGULATE EXPERT TESTIMONY.<sup>1</sup>

EDWIN R. KEEDY, *Chairman*.<sup>2</sup>

The American Institute of Criminal Law and Criminology at its meeting in Washington, D. C., on October 22, 1914, unanimously approved the following bill, which was presented by the committee on insanity and criminal responsibility.<sup>1</sup>

SECTION 1.—*Summoning of Witnesses by Court.* Where the existence of mental disease or derangement on the part of any person becomes an issue in the trial of a case, the judge of the trial court may summon one or more disinterested qualified experts, not exceeding three, to testify at the trial. In case the judge shall issue the summons before the trial is begun, he shall notify counsel for both parties of the witnesses so summoned. Upon the trial of the case, the witnesses summoned by the court may be cross-examined by counsel for both parties in the case. Such summoning of witnesses by the court shall not preclude either party from using other expert witnesses at the trial.

SECTION 2.—*Examination of Accused by State's Witness.* In criminal cases, no testimony regarding the mental condition of the accused shall be received from witnesses summoned by the accused until the expert witnesses summoned by the prosecution have been given an opportunity to examine the accused.

SECTION 3.—*Commitment to Hospital for Observation.* Whenever in the trial of a criminal case the existence of mental disease on the part of the accused, either at the time of the trial or at the time of the commission of the alleged wrongful act, becomes an issue in the case, the judge of the court before which the accused is to be tried or is being tried shall commit the accused to the State Hospital for the Insane, to be detained there for purposes of observation until further order of court. The court shall direct the superintendent of the hospital to permit all the expert witnesses summoned in the case to have free access to the accused for purposes of observation. The

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<sup>1</sup>Fourth Report of Committee B of the Institute.

<sup>2</sup>The membership of the committee is as follows:

Edwin R. Keedy (professor of law in Northwestern University), *Chairman*.

Adolf Meyer (professor of psychiatry in Johns Hopkins University), Baltimore.

Harold N. Moyer (physician), Chicago.

W. A. White (superintendent Government Hospital for the Insane), Washington.

William E. Mikell (dean of the Law School of the University of Pennsylvania), Philadelphia.

Albert C. Barnes (judge of the Superior Court), Chicago.

Morton Prince (physician), Boston.

court may also direct the chief physician of the hospital to prepare a report regarding the mental condition of the accused. This report may be introduced in evidence at the trial under the oath of said chief physician, who may be cross-examined regarding the report by counsel for both sides.

SECTION 4.—*Written Report by Witness.* Each expert witness may prepare a written report upon the mental condition of the person in question, and such report may be read by the witness at the trial. If the witness presenting the report was called by one of the opposing parties, he may be cross-examined regarding his report by counsel for the other party. If the witness was summoned by the court, he may be cross-examined regarding his report by counsel for both parties.

SECTION 5.—*Consultation of Witnesses.* Where expert witnesses have examined the person whose mental condition is an element in the case, they may consult before testifying, with or without the direction of the court, and may prepare a joint report to be introduced at the trial.

Section 1 applies to civil and criminal cases.

The purpose of this section is to secure the testimony of disinterested witnesses which may go to the jury along with the testimony of the witnesses for the prosecution and defense. Under the present system, a criminal trial where expert testimony is employed generally resolves itself into a contest between the opposing witnesses, whose contradictory opinions often confuse, rather than enlighten, the jury. Such divergence of opinions must exist in the very nature of the case, for each party calls only those witnesses whose opinions are in accord with the theory of that side. The situation in this respect has been well described by Sir George Jessel, Master of the Rolls in *Thorn v. Worthing Skating Rink Co.*, L. R. 6. Ch. Div. note 415, 416: "Now in the present instance I have, as usual, the evidence of experts on the one side and on the other, and as usual, the experts do not agree in their opinion. There is no reason why they should. As I have often explained, since I have had the honor of a seat on this bench, the opinion of an expert may be honestly obtained, and it may be quite different from the opinion of another expert, also honestly obtained. But the mode in which expert evidence is obtained is such as not to give the fair result of scientific opinion to the court. A man may go, and does sometimes, to half a dozen experts. He takes their honest opinion; he finds three in his favor and three against him; he says to the three in his favor, 'will you be kind enough to give evidence?' He pays the ones against him their fees and leaves them alone; the

## EXPERT TESTIMONY

other side does the same. It may not be three out of six, it may be three out of fifty. \* \* \* I am sorry to say the result is that the court does not get the assistance from the experts which, if they were unbiased and fairly chosen, it would have a right to expect." A similar statement was made by one of the medical members of this committee in the *New York Medical Journal*, in July, 1908. It is suggested that the proposal in section 1 will tend to counteract the evils of the system described above.

Section 2 applies to criminal cases only. This section will enable witnesses for the prosecution, who at present, in most cases, are limited to opinion evidence, to testify as to the actual condition of the defendant. In this way the necessity for the much-abused and much-criticized hypothetical question will be considerably lessened. It is submitted that section 2 does not violate the constitutional provision against self-incrimination. (See Wigmore on *Evidence*, §2265.) In *People vs. Kemmler*, 119 N. Y. 580, 584, the Court of Appeals of New York said: "It is urged that the court erred in permitting the physicians, called as witnesses for the people, to testify as to the mental condition of the prisoner. The argument is that either the relation of patient and physician existed, or else the prisoner was compelled to furnish evidence against himself. These physicians were sent to the jail by the district attorney to make an examination of the prisoner's mental and physical condition. On the stand they were not inquired of as to the conversation had with him, or as to the transactions in the jail. Their testimony was simply their opinion of his mental condition, as they saw him in his cell and in the court room, but they gave no evidence of his statements of his physical condition. Such evidence is quite unobjectionable."

Section 3, which is applicable to criminal cases only, does not present a new idea. Maine,<sup>2</sup> New Hampshire,<sup>3</sup> Massachusetts<sup>4</sup> and Vermont<sup>5</sup> have statutes providing for the commitment of a defendant, who is relying upon mental disease as a defense, to a hospital for purposes of observation. According to the language of the Maine and Vermont statutes, the report of the superintendent is final on the question of the defendant's condition, for they provide that the accused shall be detained and observed "that the truth or falsity of the plea (of insanity) may be ascertained." The Virginia legislature at

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<sup>2</sup>Rev. Stat., 1903, ch. 138, sec. 1.

<sup>3</sup>Laws of 1911, ch. 13, sec. 1.

<sup>4</sup>Acts of 1909, ch. 504, sec. 103.

<sup>5</sup>Pub. Stat., 1906, sec. 2307.

EDWIN R. KEEDY

its last session (1914), enacted a statute<sup>a</sup> providing that the trial judge may commit an accused person to a hospital for purposes of observation. The statute also empowers the judge to appoint qualified experts to examine the accused before this commitment and to report the results of their examination to the judge. The establishment in large cities of psychopathic institutes, such as the one recently started in Chicago in connection with the Municipal Court, would facilitate greatly the examination and study of persons mentally diseased or deficient.

Section 4, which covers both civil and criminal cases, will enable the expert witness to present a much more accurate and connected description of the defendant's mental condition, particularly with reference to the symptoms of his disease. Under the present system, by which the opinion of the witness must be drawn out by a series of questions put up by counsel, witnesses often feel that they are unable to present an adequate diagnosis of defendant's condition, and to express a full and convincing opinion regarding his powers of judgment and decision. Such a plan as is proposed in section 4 has worked successfully in Scotland. The medical witness in a Scottish criminal trial, after an examination of the defendant, prepares a written report which he files with the clerk of the court. At the trial, after the witness has been sworn and has qualified as an expert, he reads his report to the jury. The counsel for the party which has called the witness may ask any explanatory questions, and the witness is then cross-examined by the counsel for the other side.

Section 5, which is applicable to both kinds of cases, is simply for the purpose of saving time and eliminating any possibility for misunderstanding, where the experts are able to agree in their opinions.

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<sup>a</sup>Acts of 1914, ch. 313.

(Remarks<sup>1</sup> by Hon. Orrin N. Carter, Justice of Illinois Supreme Court, relative to bill to regulate expert testimony.)

## A BILL TO REGULATE EXPERT TESTIMONY.

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Mr. Chairman: Ordinarily I am reluctant to have the Institute pass a resolution in favor of special or particular legislation, because generally we do not have time here to give full consideration to the subject. This matter we are now discussing, however, I consider an exception. Few subjects have been given the exhaustive investigation before reporting that has been given by the committee to this. From my own personal experience and observation there is another reason I think why we should make an exception in this matter; the great majority of people who have given it any study fully agree that there should be a change in regard to the calling and examination of expert witnesses. Many people believe that experts testify for the side which will pay them the most, and that they ought not to be called by the litigants. Lawyers, as well as laymen, think our system of calling and examining experts should be changed.

I have given the subject of this report considerable thought, but a judge of a court of last resort does not wish to express an opinion on constitutional questions before they come to him in due course, and hence I would not wish to express publicly whether I thought this recommendation in all respects would be constitutional. I deem it entirely proper to say, however, that judges of courts are reasonable men, and that most members of courts of last resort are very anxious to uphold the constitutionality of a statute that is based on reason and good sense. Indeed, many good lawyers think that the courts of many of the states are too ready to yield to public opinion and stretch the constitution in order to hold constitutional certain laws along new lines embodying the ideas of the time. I am not here to discuss whether that be true or not.

I think the chairman of this committee is right in saying, if you do not allow the defendant in a criminal case to call experts, if he desires to do so, that there is grave danger of the law being held unconstitutional in some, if not all, of the states. Not only that, but such a law would not strike the ordinary person as being fair. Judges, as well as laymen, are desirous of having the laws treat everyone

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<sup>1</sup>Made at the meeting of the American Institute of Criminal Law and Criminology, in Washington, D. C., on October 22, 1914.

fairly; a defendant accused of crime should have a right to be heard and—so far as reasonably consistent with the due course of law—to present his evidence in the way that he wishes. The present method of calling and examining expert witnesses is not only unfair, but often brings most disastrous results.

We naturally draw on our personal experiences in discussing changes in the law. For nearly twelve years I presided over a court in Chicago, in which all persons whose sanity was questioned were tried. The question of expert witnesses was often called to my attention, as it has been frequently in a striking way in the court of which I am now a member. In a recent murder trial that came before the Supreme Court of Illinois for review, the question of the sanity of the defendant was raised. Expert testimony had not been put in, at least in a proper way, in the trial below. The members of the Supreme Court of Illinois would have been much better satisfied in passing on that case if the testimony as to the sanity of the defendant had been properly presented. From the record we could not satisfactorily reach a conclusion as to whether the man was insane, or was what is commonly known as a degenerate. On an appeal to the Governor to commute or reprieve the defendant, he called in experts to make an examination. The court would very gladly have considered the testimony of those experts, if they had been called on the trial.

This report recommends that pending the investigation before the criminal trial, the defendant be taken to the asylum for the insane and kept. I have talked with Prof. Keedy about some of the difficulties in the way of enforcing that provision, unless the law is carefully drawn. In Illinois we have five state institutions, as I recall the number, where the insane are cared for. The law should be so drawn that the defendant would be taken to the nearest state asylum. I suggested, among other things, to Prof. Keedy that I had some doubt as to the practicability of such a law, as the expense and delay in the trial would be too great, but he stated in reply that the plan had been tried in other jurisdictions and found to be practical. That is the real and true test of such a plan as this. If it works successfully in some states it ought to work successfully in all the states, if the law is carefully drawn. Of course I cannot guarantee that this draft of the law is drawn in the right way. If it is, it is the first time that I have ever known the first draft of a new law to be so drawn. I have never seen any statute where lawyers would not disagree as to its meaning. Indeed, Mr. Chairman, I have written opinions, now

## EXPERT TESTIMONY

in the books, as to the meaning of parts of which lawyers have taken diametrically opposite views, when in writing the opinion I did not intend to have it construed as either of the lawyers contended. I have sometimes thought that the great Frenchman, Talleyrand, was right when he said that language was meant to conceal rather than to express thought.

I am very much in favor of this law, so drafted in each state as to meet the conditions in that state. Of course this will not do away entirely with such foolishness as Prof. Keedy has called attention to in this report, where a hypothetical question was presented which took half a day to read to the witness. I have no doubt, though, that such a law as this will prove of great use in remedying many of the evils that now exist in reference to the calling and examination of expert witnesses. Lawyers and courts are probably much to blame for the condition that now exists, especially as to allowing such unreasonable questions as just referred to. Agitation and education should force courts and lawyers to put a stop to that sort of an examination. We can bring about that result by concerted action. I cannot emphasize too strongly, Mr. Chairman, my desire to see enacted in every state, a statute modelled along the line of the suggestions offered in this report.



(*Editorial by John H. Wigmore in Illinois Law Review for  
December, 1914.*)

## THE BILL TO REGULATE EXPERT TESTIMONY.

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At last it would seem that the lamentable conditions of expert testimony, under the present law and practice, have some prospect of improvement.

More than fifty years ago, Lord Chancellor Campbell, speaking of experts' testimony (*Tracy Peerage Case*, 10 Cl. & F. 154) said pessimistically, "Hardly any weight should be given to their evidence"; and since that time, still harsher sayings have been uttered by judges. In spite of much study of the problem, no solution has commanded acceptance.

The reasons for this lamentable condition of things lie partly in the inherent nature of such testimony and partly in the law. But the law's part of the fault has been that it has not sought to adjust itself explicitly to the special conditions. The ordinary rules did not suffice, and some adjustment was needed, before things could improve. But for this purpose some understanding by both parties—lawyers and scientists—of each other's limitations was indispensable, and some concessions on each side. This understanding and these concessions lacking, no progress was possible.

But at last the attempt has been made to confer and agree, and the result promises to be a solution of this long standing problem—so far at least as its solution depends upon legal practice, and not on the ethical behavior of the two professions. A committee of the American Institute of Criminal Law and Criminology, with Professor Edwin R. Keedy as chairman, has been working on the subject for the past three years. The four medical members of the committee represent the widest experience and a national fame: Adolph Meyer, director of the psychiatric hospital of Johns Hopkins University; Morton Prince, professor of psychiatry in Boston University; William A. White, superintendent of the Federal Hospital for the Insane at Washington; and Harold N. Moyer, of the Chicago Medical Society. The lawyers' names are equally a guarantee of experience and sound judgment: Albert C. Barnes, judge of the Superior Court of Cook County; William E. Mikell, dean and professor of criminal law in the law school of the University of Pennsylvania; and the chairman, who made a study of the subject in two foreign

## EXPERT TESTIMONY

countries. If this weighty body of opinion, after the fullest discussion, can be brought into agreement, and proposes something as an adequate measure of reform, the rest of us may well be satisfied to accept it. We mean this literally; our profession can afford to give full faith and credit to the proposal of such a body.

And what is this measure? It consists of five sections; each one of them aims to remedy one aspect of the complex problem; and the combined effect of the five is to remedy all of the most serious shortcomings of the present practice, and thus to do in one enactment all that the law itself can do under present conditions.

Section 1 empowers the judge to summon expert witnesses (selected by himself or by parties' agreement), in addition to those summoned by the parties. This is the first needed step to eliminating the extreme evil of hired partisanship, but it wisely does so by trusting to the greater moral weight of a judge-selected expert, instead of attempting to create an exclusive and permanent body of official experts; for the latter measure (often proposed by medical men) is both impracticable and un-American.

Section 2 provides that in criminal cases (on the sanity issue) the expert medical witnesses offered by the prosecution shall have equal opportunity with those of the defence to examine the accused. This removes one important source of unfair use of expert testimony to becloud a case. It will also much lessen the need for the much-abused hypothetical question.

Section 3 empowers the judge, on a sanity issue in a criminal case to place the accused in a hospital for observation by all the expert witnesses. This, again, removes one of the present means of juggling with testimony, and furnishes the condition on which scientific and impartial alienists depend for forming a safe and useful judgment.

Section 4 permits the expert witness to read, as his direct testimony, his report in writing, subject then to cross-examination. Here, once more, the legal limitation is removed which leads to so much of the artificial partisanship now obtaining, and is so irksome to the true and impartial scientist. The condition is furnished which will make the witness-box seem more natural to the medical practitioner, without abandoning any of the traditional safeguards of the law.

Section 5 permits the experts to consult before trial, and to prepare a joint report if desired. Here, too, legal practice is allowed to conform to the normal practice of all reputable medical practitioners in dealing with a serious case. The false and futile forcing

of medical men to disagree, and the foolish bear-baiting so absurd in a quest for truth, is made needless under the law, if the practitioners are disposed to take the opportunity.

Now the notable thing about these measures is that the last four of them are merely measures which bring the law into conformity with all reputable medical and other scientific practice. They are measures which the medical profession has long demanded. The perverse thing about our law has been that it flew in the face of facts. It has complacently expected to get at the truth without methods which are always used in getting at the truth in ordinary scientific practice. The law does not mean to be foolish, and lawyers as a class are not chargeable with stupidity. But it is simply preverse childishness to ignore in legal trials of truth, when expert aid is invoked, the indispensable methods which the experts themselves use and must use in their own work outside of court. If the law will give up this perversity, and will look facts in the face, it may expect to obtain results worthy of its mission; but not otherwise.

There is nothing in this bill to frighten the lawyer. There is nothing in it to discourage the expert witness. There is everything in it that can satisfy the needs of both classes.

The significant fact is that it has commanded the support of seasoned representatives of both professions. At the October meeting of the American Institute of Criminal Law and Criminology, in Washington, the report was adopted. The proposal has been adopted by the Committee on Expert Testimony of the Council on Health and Public Instruction of the American Medical Association, and will be presented to the next Conference on Medical Legislation. The same bill will this winter be laid before committees of the American Bar Association and of the National Conference of Commissioners of Uniform State Laws, as also of the American Neurological Association. If it receives the approval of these bodies, the prospect is that it will be favorably accepted in the state legislatures soon thereafter.

And so a light is dawning on a problem which has long vexed two great professions.

CRIMINAL STATISTICS, (REPORT OF COMMITTEE NO 3 OF  
THE INSTITUTE).<sup>1</sup>

JOHN KOREN, CHAIRMAN.<sup>2</sup>

There are three general sources of statistics of crime: (1) The records of the police; (2) the records of the criminal courts (including those of official prosecutors); and (3) the records of penal institutions.

In previous reports of this Committee emphasis has been laid chiefly upon the need of drawing statistics of crime from the records of the courts. The reason for this is fairly obvious since the criminal court records provide us with a measure of the extent and character of the criminality which is brought to trial before the various tribunals, and at the same time enable us to observe the operations of the legal machinery devised not only as a check upon but as a corrective of criminality. Supplementary to the statistics from court records we have regarded those relating to probation work.

In respect to statistical compilations from this first source, it must be confessed that great progress has not been made since the foundation of the Institute. The need of adequate criminal statistics is perhaps more clearly recognized than ever, and interest in them has certainly not subsided, as witness the constant references to the subject and the more frequent publication of statistical studies, for instance, the analysis of the work of the Supreme Court of Illinois, the examinations of court records in Wisconsin, etc. But the country still awaits the establishment in any State of a bureau endowed with sufficient authority and properly equipped for the collection of statistics of crime. Nor has any existing statistical bureau been empowered to extend its functions for the purpose of doing this particular work. Here and there enactment of the necessary legislation has been sought, but so far without much success. The hopes awakened by the brave effort in Illinois to create a bureau of criminal statistics have not yet materialized for

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<sup>1</sup>Committee report presented at the Washington meeting of the Institute of Criminal Law and Criminology, October 22, 1914.

<sup>2</sup>The membership of the Committee is as follows: John Koren, Boston, chairman; Chas. A. Ellwood, Columbia; Edward Lindsey, Esq., Warren, Pa.; Frank L. Randall, Boston; Louis N. Robinson, Swarthmore College; Eugene Smith, New York City; A. W. Towne, Brooklyn; A. L. Bowen, Springfield, Ill.; R. E. Chaddock, Columbia University; A. J. Todd, University of Pittsburg; Frank W. Blackmur, University of Kansas; R. B. Herbert, Columbia, N. C.; Dr. Isaac Hourwich, Brooklyn.

## JOHN KOREN

reasons which need not be considered in this report. It is becoming increasingly evident that the agitation for special or already existing State Bureaus as agents to collect criminal statistics must be directed by State branches of this Institute and not by a general committee whose members are scattered all over the country. The fond anticipation that the United States Bureau of the Census would demonstrate what can and ought to be done by gathering and publishing criminal judicial statistics on a country-wide scale has been disappointed and there is no indication of its realization in the near future.

The annual crop of statistics of penal institutions continues to be very much of the same old character. Some of it is unquestionably of local usefulness, particularly that gathered by certain State Boards, but much may be described as unripe fruit, not fit even for the toughest statistical digestion. Although the institutional variety of criminal statistics occupies a limited field, its helpfulness could be greatly enhanced by additional inquiries and improved methods of presentation. It should be remembered, too, that it lends itself in a particular way to highly specialized studies. Here another disappointment must be recorded. The decennial report on prisoners and juvenile delinquents issued by the Bureau of the Census for the year 1910 is this time not only greatly belated, having made its appearance in 1914, but consists of but a few general tables; the document is of slight utility. The causes of this misadventure are foreign to our report. The uncomfortable fact remains, however, that our sole means of surveying the conditions of crime as manifested by prison returns for the whole country has this time been denied us.

The third channel through which one should expect a continuous flow of elementary but none the less essential information about crime may be likened at present to a turbid stream under low pressure whose tributaries are clogged and sometimes wholly dried up. We refer to the records and reports of the police which form the principal topic of this report.

Police statistics may be called the primary element of criminal statistics. Criminal judicial statistics perforce deal only with that portion of criminality which comes before the courts for adjudication. Prison statistics are self-evidently limited to that output of the courts which has been pronounced fit for punishment and reformation. But police records have for their material the incidence of crime in the community, the work of discovering its perpetrators

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and bringing them before the proper authority for examination and eventual trial. Thus the records of the police when translated into well-ordered and analyzed statistics should provide the starting point from which one may proceed in an intelligent inquiry concerning the conditions in respect to crime in any community, the numbers and kinds of offenses actually committed, the proportion of offenders apprehended or the disposition made of them through the medium of the police. Furthermore, it lies in the nature of things that under the ideal conditions police records should furnish data of the greatest importance relative to general social aspects of the crime problem and more especially relative to the history of offenders. To put it briefly, police statistics should furnish the first link in the chain of statistical evidence about crime which we must forge unless we are content continually to grope blindly in our efforts to deal with an undiminishing and sorely pressing social problem.

Yet to speak knowingly of police statistics, such as we have in this country, is equivalent to uttering some uncomplimentary truths, for the official information afforded about the operations of the first line of defence established against criminality is as a whole lamentably insufficient, crude and unworthy of enlightened communities that bear ever-increasing burdens for the protection of life and property against the criminal.

Before citing the facts upon which this characterization is based, let us instance the kind of information an interested public may reasonably expect to find in the police record of any large city. It is unnecessary to dwell on statements in regard to the personnel of the police, its numbers, divisions, distribution, general equipment, cost of maintenance, etc. Not that a clear-cut presentation of these things is unimportant, quite the contrary, but they are more likely to be over-emphasized than not in an otherwise wholly incomplete and incompetent report. Our main concern, however, is with presentations of the activities of the police against crime. In order that they may be exhibited satisfactorily, it seems necessary as a minimum requirement that police reports should present in adequate tabular forms:

(1) *The total amount of crime*, classified under appropriate headings, which has been brought to the notice of the police during the year, with comparisons for previous periods and accompanied by ratios to population for the respective years.

(2) *The whole number of arrests made during the year*, with comparisons of previous years and ratios to population, classified by

offenses or charges, age, color, sex, place of residence, nativity, parent nativity, and number of previous arrests.

The difference between numbers one and two would give the proportion of the reported crime remaining unaccounted for.

(3) *The disposition of the persons arrested*, showing the numbers released for want of evidence or other reasons, the numbers brought to trial or otherwise disposed of (referred to societies, sent to other places, etc.), the outcome of trial and final disposition of persons convicted and sentenced, both misdemeanants and felons. (The disposition of cases, to be adequately shown, should be checked up by the work of prosecuting officers. It is never done and cannot easily be accomplished until States Attorneys or District Attorneys are compelled, as they should be, to give a public account of their doings.)

(4) *Special tabular presentation of police work* relative to neglected or delinquent children, probation cases, etc.

It is not attempted in the above to indicate statistical forms, but simply to summarize matter that should be made the object statistical presentation. There are, of course, numerous police activities not referred to which demand adequate statement, for instance, those relating to street traffic, casualties of all kinds, licenses, inspection work, the recovery of lost property, etc.

Now what do current police reports actually afford by way of information in regard to the work of detecting and preventing crime?

The basis for a reply has been obtained by studying the annual ment.

reports of the police departments of the following cities: New York, Chicago, Philadelphia, St. Louis, Boston, Cleveland, Baltimore. Detroit, Buffalo, San Francisco, Milwaukee, Cincinnati, Newark, New Orleans, Washington, Minneapolis, Seattle, Indianapolis, Denver, Louisville, Atlanta, New Haven, Richmond, Omaha and Grand Rapids, a total of 25 cities, and certainly representative in point of population.

A separate analysis of the police reports for these cities would manifestly be beyond the limits of this report and necessitate much tedious repetition. But they have certain characteristics in common which can be summarized and furnish ample evidence.

To begin with, not a single one of the reports in question adequately meets the above mentioned minimum requirements or can be recommended as a general model, although the degree of excellence, or rather of imperfections, varies greatly. More than this, among the cities under consideration there is at least one which does not

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even regularly issue a report of its police work and another which confines itself to the use of a few blank forms purporting to give certain general details and evidently not intended for publication but simply for submission to the Mayor and City Council.

It seems almost incredible, yet is a fact, that cities of over 150,000 population in this country are not in the habit of issuing regular reports in regard to police work.

The features common to the published reports immediately under consideration may be stated as follows:

(1) *Lack of Comparability.* Not only is there a total absence of uniformity in methods of presentation for the different cities, but also in matter treated. In addition, there is not always comparability between different issues of reports for the same city; and as a rule, no decent effort is made to institute comparisons year by year.

(2) *Lack of Elementary Facts.* Of crimes perpetrated, but which do not result in arrests, there is rarely any mention. The variations in arrests from one period to another are not accounted for or at least not in the light of population changes, new legislation, etc. Concerning persons arrested, a distinction is usually made as to sex, but much more seldom as to color. Even some large cities with a very numerous colored population do not attempt the distinction in question. The relation of the foreign born to crime is not so tabulated that it can be brought into relation to the amount of crime attributable to them or in any way make it evident what part the foreign born play in the criminal relations. The population facts given, if any, are only exceptionally combined with the offenses. Comparatively few police reports show the nativity of persons arrested, never the parent nativity, and not in one instance is this matter of nativity brought into relation with offenses. The occupations of the arrested are commonly given, but regularly consist of a simple unclassified enumeration which is absolutely valueless since it cannot be studied in connection with offenses nor in the light of the distribution of the general population by occupation. Age classifications of prisoners are for the most part wholly wanting. As a rule the offences for which persons are arrested are enumerated alphabetically without any attempt at proper groupings. Twelve out of twenty-five reports are silent or practically so on the question of how the persons arrested were disposed of; that is, how many were brought to trial, the issue of the trial, etc. It is quite exceptional that one can determine the final outcome and then almost exclusively in the cases of misdemean-



ants. What happens to those coming before the higher courts is clearly set forth in but one out of the 25 reports.

(3) *Lack of Analysis.* In but half a dozen of the 25 reports is effort made to summarize the statistical evidence in such way that its significant features are brought out authoritatively. For the rest, the reader is left to seek his own way in the maze of statistical state-

(4) *Lack of Order and Accuracy.* The statistical tables given are for the most part a jumble, with insufficient or even misleading headings and confused in arrangement. Often they are scattered throughout the volume, being sandwiched in between irrelevant matter. Errors abound, some plainly due to amateur proofreading, and some to gross carelessness.

(5) *The Statistical Presentation* is usually subordinated to other matter, some of which may even be of dubious value. In general, the space given to the consideration of the most important parts of police work, namely that relating to crime, is utterly inadequate. One wonders how, for instance, in the case of the largest city in the country, it is possible to set forth the crime situation from the police point of view in less than ten pages of tabulation. And what a comment on the estimate of relative values to find one of our chief cities giving six pages to arrests and offences and three times that number to parading the names and ranks of the members of the uniformed force! The difference merely in matter of printed pages occupied by police reports indicates a striking divergence of views as to their importance and value. For example, one is prompted to ask how it is that cities like Buffalo and Baltimore require each about 140 pages for the annual statement of police work, while San Francisco contents itself with 25 and Chicago with a scant 50. To be sure, the merits of a police report are not to be measured by the number of its printed pages, yet the differences in this respect reveal in some degree how differently and generally how inadequately the importance of public information in regard to the police is rated.

But if it is true of all the publications under consideration that they give less space than seems needed to statistics of crime, it is usually true that most of them pay disproportionate attention to relatively unimportant things, while some are guilty of presenting questionable matter. An example of the last mentioned is a report which gives long pages of tables showing the number of arrests and "assists" credited to each member of the force. Here and there one finds other evidence of a greater concern about exploiting the services of indi-

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viduals than about informing the public in regard to vital aspects of social conditions.

Since it is a fact that the police reports of many of our largest and presumably most advanced cities fall so far below even a modest standard of completeness and excellence, what must be the truth in regard to the multitude of smaller communities in which the crime question, if of less magnitude, is still one of prime importance? To point out the shortcomings, especially of a statistical nature, of official reports is a comparatively simple, although distasteful task. Happily, it is not our province to apportion blame except in a general way. We may reasonably begin by instancing our own indifference.

If the intelligent public demanded better police statistics they would surely be forthcoming. While no doubt many police officials do not clearly perceive or are careless about their duties to enlighten the public, others realize the justification of precisely such criticism as this report voices. They are, however, hampered by insufficient appropriations for statistical work and even more by lack of trained help. Assuredly, it is not a matter for the apprentice hand to prepare a thoroughly satisfactory scheme for presenting police statistics. Among other desiderata is that of securing comparability between the police work of different places; but it is beset by many difficulties, owing not only to differences in police organization and prescribed duties, but to differences in laws governing the prosecution and adjudication of crime.

This committee has not undertaken to recommend a model for the compilation and presentation of police statistics. It cannot be done satisfactorily without consulting the authorities in many municipalities nor without a careful study of local needs and local limitations. We venture to suggest, however, that the Institute give the question continued attention and seek to work out an adequate scheme of general adaptability in conjunction with the National Association of Chiefs of Police.

## THE NECESSITY FOR A PUBLIC DEFENDER

MAYER C. GOLDMAN<sup>1</sup>

Among the grave legal and sociological reforms which are being seriously urged at present by thinking people, there is being actively agitated the important proposition of creating the office of a Public Defender to defend indigent persons accused of crime.

If by the establishment of such an office, the standard of our criminal jurisprudence can be raised and the principles of human justice thereby placed upon a more solid foundation, the inevitable result thereof must be, that the suspicion now lurking in the public mind to the effect that a discrimination exists between the rich and the poor, must give way to a wholesome realization of the fact that our much vaunted theory of "equality before the law" has become an actuality—instead of a mere high-sounding phrase.

It must be apparent to all, that the important consideration in the trial of any cause, is, (or ought to be) to ascertain the truth—and not a mere contest in which one side or the other is permitted to gain an advantage by superior strategy, skill or power. And yet, Judge Edward Swann, of the New York Court of General Sessions in a recent newspaper article, written by him, made the remarkable statement, that "the modern trial is not an effort on both sides to arrive at the truth and the merits of the controversy but a contest in which the district attorney tries to get the facts in evidence and the defendants try to keep them out by every means within the rules." If the ascertainment of the truth really is the all important mission of a trial—or on the other hand—if as contended by Judge Swann, the modern trial is merely a contest in which the truth is relegated to a minor position—in either aspect—it follows as a logical sequence, that any method or procedure by which the truth can be more definitely established, or which will elevate the standard of criminal trials to their true function, must necessarily commend itself to the thoughtful intelligence of a civilized community. Judge Swann's arraignment of the modern criminal trial, while made in support of his views against the establishment of a Public Defender, is nevertheless an effective argument in favor thereof.

There must be something radically wrong with a system which does not afford to all classes of accused persons, an equal opportunity to procure all available witnesses or competent expert testimony, which does not give an ignorant or indigent defendant the benefit of able and experienced counsel, which does not afford full opportunity for investigation, to the same degree as is possessed by an accuser, acting through a public prosecutor.

It must be borne in mind at the outset, that it is no more the function of the state to convict the guilty than to shield the innocent. It is also clear that under our legal system, the presumption of innocence attaches to the accused until he is proven guilty. If these

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<sup>1</sup>Member of the New York Bar.

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theories have any real value, it is a natural conclusion that the state should extend its powerful aid and protection to the accused as well as to the accuser—otherwise the much discussed “presumption of innocence” is merely a beautiful illusion. A procedure which permits an accuser—perhaps malicious or vindictive—and possibly not averse to committing perjury—to start in motion, the great and efficient legal machinery of the state and denies to the presumptively innocent accused the same powerful forces for his defense, is unjust and vicious—being based neither upon true equity or sound reasoning.

That there is an inherent weakness in our administration of the criminal law and in our approach to the ideal of justice, is evidenced by the constant attacks and criticisms which have been and are now being leveled against conditions existing in our courts. Leading newspapers and magazines frequently comment thereon in vigorous editorials. Distinguished lawyers, law reformers and sociologists have described numerous abuses and specific instances of the perversion of justice and the general public has gotten the somewhat indelible impression, that the poor man accused of crime is not on an equal footing with the rich defendant. It is scarcely necessary to cite instances to prove the latter assertion—but lest we be charged with misguided sentimentality, it may not be amiss to quote from so eminent a lawyer and broad-minded a citizen as ex-President Taft, who said in a recent speech:

“Of all the questions that are before the American people, I regard no one as more important than this, to-wit, *the improvement of the administration of justice*. We must make it so that the poor man will have as nearly as possible an opportunity in litigating as the rich man *and under present conditions, ashamed as we may be of it, this is not the fact.*”

The result accomplished in the case of Henry Siegel, the banker who was recently convicted in New York, and which result has been severely condemned, is not likely to minimize this general public impression that a discrimination exists in favor of the criminal who operates on a gigantic scale—and filches millions—as against the poor unfortunate, whose necessity drives him to steal enough to keep body and soul together.

Despite the so-called “safeguards of our liberty,” which apparently surround the accused in most American states, viz.: the preliminary hearing before a magistrate, the indictment by a Grand Jury, the required unanimous verdict of a petit jury, the presumption of innocence, the rule as to reasonable doubt, the presumed quasi-judicial character of the District Attorney, the independent investigations made by his office staff, as well as by a probation officer, the facts are, that often the accused is not represented by counsel in the Magistrate’s Court, that frequently a prisoner is held by the Magistrate for the Grand Jury in cases where the Magistrate lacks the courage to dismiss the complaint and prefers to place the responsibility upon the Grand Jury, that prosecutors usually make a one-sided examination, based upon the information furnished by the complainant,

that the Grand Jury investigation is usually *ex parte*, that the District Attorney is the official adviser to the Grand Jury and that his recommendations are usually followed by that body. While the theory is, that a District Attorney should have due regard for the rights of a defendant, the fact is, and experience has shown in many criminal cases, that he is a prosecutor, that the public expects and pays him to prosecute, that he cannot be both a prosecutor and a defender and that he is necessarily, more or less a partisan. An indigent person who goes to trial with assigned counsel, who is either indifferent, incompetent, unscrupulous or working without compensation (except in some jurisdictions, in capital cases) is naturally at a disadvantage, as compared with the more fortunate defendant who is able to employ skilled counsel to contest the issue with the powerful, experienced and resourceful prosecutor. Notwithstanding all the so-called "safeguards" there can be no denial of the fact that the contest between the State and the indigent defendant is an unequal battle and it is so regarded by those who are familiar with the conditions existing in the criminal courts. Even the champions of the present system do not pretend that assigned counsel render satisfactory or conscientious service to the accused, they concede that in cases where expert testimony is required that an indigent defendant is at a distinct disadvantage—and many criminal judges have criticized the present system of assigning counsel without compensation—as well as to comment unfavorably upon specific abuses brought to their notice.

It is most unfortunate that the evil methods practised by a certain type of criminal lawyer have had a tendency to bring the entire profession of the law into disrepute.

There are those who would have us believe that it is absolutely impossible for an innocent person to be convicted, that a miscarriage of justice is quite inconceivable, that the poor defendant is on an exact equality before the law as a rich defendant, that the average assigned counsel serving without compensation, fully protects and defends the accused, that district attorneys are infallible and uniformly impartial—in short, they seek to convince us that our very human agencies in the prosecution and trial of accused persons, are so perfect, that for one to even suggest a contrary opinion, or to criticize prevailing conditions, lays him open to the charge of attacking our judicial institutions, or reflecting upon "constituted authority." The tender solicitude shown by some people for "constituted authority" must give way to the more important principle of meting out equal justice to all classes of accused persons.

The numerous reversals by appellate tribunals of convictions based upon unfair trials, improper tactics, or the prejudicial attitude of the District Attorney or the trial judge, completely refute the claim that the rights of the accused are always properly protected. Nor is there any adequate compensation to the innocent man who is unjustly indicted and imprisoned and possibly ruined, by the cost of establishing his innocence.

What is the remedy proposed for the manifestly unfair discrimi-

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nation against the indigent accused? Not a mere sentimental, fanciful theory—not a revolutionary or Utopian idea—but a vital, practical, economical plan—which has the prestige of successful operation in some of our large cities to lend weighty support to its basic principle. The establishment of a Public Defender is the logical key to a solution of the problem. He should be an elected official, his compensation should be large enough to attract the highest type of lawyer, he should be as powerful and independent as the District Attorney, he should have such assistants, investigators and resources as may be necessary to properly conduct his office, he should have a definite standing before the Grand Jury, in order if possible to prevent indictment in cases where by reason of his investigation, he believes that an irreparable injury will be done thereby to an innocent person, he should protect the rights of a defendant who calls upon him for assistance—in every phase of the proceedings wherein the District Attorney appears—commencing at the preliminary hearing before a Magistrate. It is not his function to endeavor to defeat the ends of justice—but rather to co-operate with the District Attorney, whenever not inconsistent with his duty to his client, and whenever possible, in order to bring about an ideal administration of the law. His duty should be plainly directed to shielding an innocent defendant or obtaining a just and fair punishment for one found guilty—not to seek to acquit a guilty one.

It is confidently asserted, that some of the advantages which will accrue from this office, are the following: that the theoretical "safeguards" now thrown about the accused will be rendered more effective through a genuine protection of his rights; that cases would be more honestly and ably presented; that perjured and unscrupulous defenses would be materially reduced; that unfair discrimination between different classes of prisoners will be eliminated; that justice will be more speedily administered, thereby reducing the confinement in jail of one awaiting trial—and in larger cities reducing the prison congestion; that a certain type of criminal lawyers will speedily disappear; that the truth in any trial could be more easily developed; that the expense to the county would be decreased and that the whole tone of a criminal trial and of the criminal courts will be elevated by a higher ideal of justice.

What are the objections raised to the Public Defender proposition? Firstly, that the accused is already too carefully safeguarded under our laws; secondly, that the additional expense of creating the office will impose a new burden on the taxpayer; thirdly, that (as stated by Judge Swann) "the office of Public Defender is an anomaly in the law," because the people employ a District Attorney to present the facts in evidence and would also employ a defender "to keep such facts out of evidence."

Taking up the third objection, the learned judge apparently misconceives the true function of a Public Defender. Such official, would, we take it, violate his official oath were he to defeat the ends of justice by attempting to suppress facts which should be received in

evidence as bearing upon the issue in dispute. His duty would be to present all the facts and the law applicable to the case and not to seek to discredit the administration of justice by merely matching wits with his opponent. The accused is entitled to counsel as a matter of right—even private counsel is not justified in keeping material facts out of evidence—what is there then to justify the characterization of a Public Defender as “an anomaly in the law”? If the presumption of innocence has any force or meaning, the due administration of justice requires that the people exert as much effort to defend as to prosecute a case.

As to the second objection urged, it is but necessary to say that it has been demonstrated in Los Angeles (as hereinafter mentioned) that the office has resulted in a saving of expense to the county. But, assuming that additional expense would be necessarily incurred by establishing such office—would it not be amply justified if thereby the liberty of the individual could be better secured and our standard of justice more highly developed? We have heretofore discussed the objection as to the present “safeguards,” which surround the accused.

Having suggested what I conceive to be the appropriate and necessary remedy for the abuses referred to, let us briefly consider the other remedies which have been proclaimed by the opponents of the defender plan, with much vigor and enthusiasm, viz.:

1. That the local bar associations should secure a list of reputable attorneys to volunteer their services to defend indigent accused persons.

2. That Legal Aid Societies or other voluntary charitable organizations, should undertake the defense of such persons.

3. That the trial judge should fix a compensation to assigned counsel in each case, such compensation to be paid by the County.

Neither of such remedies affords an adequate solution of the question. Private counsel should not be asked or expected to give their time and skill to accused persons, without compensation, to the exclusion of their other cases. Neither is it fair to the prisoner to be so defended. I take issue with Judge Swann's assertion that the Legal Aid Society “performs greater service to the community than a Public Defender could.” Conceding that such organizations do splendid work and should be encouraged, I maintain that an indigent accused (and presumed to be innocent) should not be dependent upon any charity, organized or otherwise, for the resources or opportunity to present an adequate defense, but that he should be entitled as a matter of abstract right and justice to be defended by a sworn public official, who would have a positive duty, as well as the power and standing, to properly protect the interests of the accused. Neither private or public charity, no matter how meritorious, will avail as a sufficient substitute for the denial of a legal right.

The suggestion as to compensating assigned counsel would lead to abuses—by making it possible to show favoritism to certain lawyers—and in addition, would most likely result in a greater expense to

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the county than the creation of a Public Defender—without the benefits accruing from a Public Defender.

The Public Defender's office in Los Angeles is now beyond the experimental stage—and is pronounced by its able and distinguished incumbent, Hon. Walton J. Wood, as well as by the local judges, District Attorney and enlightened public opinion, to be an unqualified success. The office has been approved on the score of "efficiency and economy" (to quote Judge Willis). In Oklahoma there has been a Public Defender for several years, although his office is somewhat different from the one now proposed. Houston, Evansville, Salt Lake City, Seattle, Boston, Kansas City, Portland, Ore., Chicago, New York and other large communities are actively agitating this innovation and the movement is becoming national in scope. The intelligent thought of our people is now fully alive to the necessity of adopting this fundamentally sound idea.

Various Bar Associations in New York, Brooklyn and throughout the country are investigating the subject. The Massachusetts Commission of Immigration has warmly recommended the establishment of such an office in that commonwealth. The writer, in the course of his activities as Chairman of a sub-committee of the Committee on Courts of Criminal Procedure of the New York County Lawyers' Association appointed to consider the proposed plan, has had ample opportunity to note the very favorable opinions thereon, expressed by judges, lawyers and laymen.

While it is not startling or strange that various criminal judges, district attorneys and members of the criminal bar, believing the present movement to be a reflection upon their methods, or upon "constituted authority," have expressed opposition thereto, it is gratifying to observe that among their number are found many sufficiently broad-minded and progressive to criticize prevailing conditions and to approve the proposed remedy. Judge Wesley O. Howard, of the Appellate Division, Supreme Court, 3rd Department, New York, in a recent public address, made a powerful plea for the establishment of a Public Defender, in the course of which he said: "No law could be more economical, nor more humane." As a former prosecutor and as a judge, he is well qualified to speak with authority upon the subject.

A bill creating the office of Public Defender, which is to be submitted to the New York Legislature of 1915, has been prepared by the writer and powerful support for such legislation is assured. Legislators in various other States have indicated their intention to offer similar bills—so that a persistent and comprehensive campaign is being waged throughout the United States to accomplish the desired purpose.

It requires merely the awakening of the public conscience to bring about progressive legislation of the necessary character. Our citizens are being fully aroused to the economic, financial and social needs of the country. It is not unreasonable to expect that when their serious thought is directed toward the consideration of a higher ideal in the administration of justice, that they will, with all the power and force of an aroused public opinion, demand the establishment of a Public Defender.



## THE MENTAL EXAMINATION OF REFORMATORY CASES.<sup>1</sup>

F. Kuhlmann.<sup>2</sup>

This paper will discuss the methods of mental examination for the purpose of determining only the grade of intelligence, and will not concern itself with any of the other forms of mental deviation from the normal. It will make no assumptions in regard to the relations between mental deficiency and crime, except in so far as to maintain that we cannot know adequately what this relationship is before we know much more than we now do about the mental status of criminals. We are not entirely ignorant of the mental status of reformatory cases, from the very fact that they are reformatory cases. A few preliminary words about this will give us some idea as to the nature of the problem of determining their exact grades of intelligence. The typical reformatory cases range from fifteen to twenty years of age. They are either in school or have left school and are engaged in some remunerative occupation. These two facts eliminate low grade feeble-mindedness, all idiots and practically all of the imbecile grade. On the whole, therefore, we are dealing either with normals or with high grade feeble-minded. Their age indicates maturity, or approximate maturity of intellectual development. This makes them the most difficult cases possible to diagnose as to grade of intelligence. Obviously small deviations from the normal intelligence are more difficult to determine than large deviations. But for any degree of deviation it becomes more difficult with the increasing age of the case. The latter is due to two factors. First, the rate of development of intelligence decreases with age, so that for older children the difference between two consecutive ages is relatively very small as compared with the difference between two consecutive ages for younger children. Second, what we term "intelligence" is a complex of many mental functions, mental traits and acquisitions. The mind not only becomes much more complex with age, but individual variations of the normal increase. In scientific terms, the measurement of a few things determines the intelligence of a young child, but many things have to be considered to determine the intelligence of the older one.

With this much in mind, let us state an important conclusion at the outset. This is that we have at present no method or methods of determining the exact grade of intelligence of the average reformatory case that is reliable in a satisfactory degree. The following discussion of the methods in use will attempt to verify this conclusion, and also show what methods are best and how they must be used to get the most reliable results.

If we use the term "clinical" in as wide and loose a sense as

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<sup>1</sup>Read before the American Association for Clinical Criminology, St. Paul, Oct. 7, 1914.

<sup>2</sup>Director of Research, State School for Feeble-minded and Colony for Epileptics, Faribault, Minn.

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it has become customary to do, we may group all methods into two classes, (a) clinical, and (b) mental tests. A clinical examination includes a great variety of inquiries. The exact procedure has always varied extremely with different examiners. Many efforts have been made to systematize that procedure with the use of clinical blanks, syllabi, systems for recording clinical data, etc. The main lines of inquiry that a comprehensive clinical syllabus aims at are (1) ancestry; (2) parental factors from conception to birth; (3) infancy and childhood; (4) present physical examination, including (a) anthropometric measurements, and (b) medical examinations; (5) mental examination, inquiring into habits, occupations, interests, school records, and intelligence by use of test questions. I want to speak of these several phases of the clinical examination as a means of determining grade of intelligence in the individual case. First, the objections.

(a) In the first three lines of inquiry stated one insurmountable difficulty lies in the impossibility of getting reliable data on the points on which the syllabus calls for it. It deals with facts about the past, and they are facts about which there is for the most part no record except the memory of the individuals now interested. A scientific procedure objects to any memory record of a fact being accepted. The reasons for this objection have recently been enforced by laboratory studies in psychology proving that under ordinary circumstances the average man is mistaken in from one-fifth to one-fourth of what he conscientiously relates as true from memory. In the present case the situation is much more unfavorable because often even a memory record is not obtainable, the person in question having deceased or not being accessible, and because the real memory of these individuals is peculiarly influenced by misinterpretation and ignorance, prejudice and unwillingness. Thus a syllabus may be ever so complete on these questions, and the data it suggests might be very valuable evidence as to grade of intelligence, and yet the practical usefulness of the syllabus be very small. Usually no data can be obtained at all on half the matter called for. What is obtained is of questionable value because of the high degree of inaccuracy in the first place.

(b) A second general difficulty with the clinical syllabus lies in the fact that much of its inquiry concerns possible causes instead of symptoms of grade of intelligence. The relation between possible causes of mental deficiency and grade of intelligence is so very remote that it is absolutely unsafe to make any inference in the individual case. Many cases of even low grade feeble-mindedness are entirely negative as to causes, either hereditary or acquired, and many persons of normal intelligence have a very bad heredity and have grown up under the influence of numerous so-called acquired causes of mental deficiency at the same time. The presence of one or several factors usually listed as causes of feeble-mindedness in the family or personal history is of little or no significance.

(c) A third objection to the clinical examination is the undue reliance placed in various physical characteristics as symptoms of mental deficiency. I refer to such matters as weight, size and shape of head, assymetries, anomalies of teeth, palate, tonsils and other glands, of the senses, musculature, and nervous reactions. The general fact, so far as known, about most of these is that they occur with more or less frequency with cases below normal intelligence. But they occur also with normals, and the difference in frequency of occurrence with the two classes has not yet been found to be very large for any physical characteristic or defect. Taking any one of these alone, it is at once obvious that the great majority of the feeble-minded, including all grades, is not affected by it, which means that in the majority of cases of feeble-mindedness we would fail to recognize the mental deficiency if our diagnosis were based on this physical characteristic. It would also mean that almost as many normals would be diagnosed as feeble-minded as cases that are really feeble-minded, because of the presence of the physical trait.

(d) Fourthly, the procedure in the direct mental examination in which no standardized tests are used. Facts that may be gathered in regard to the individual's occupations, their nature and his success in them, his interests, plans, ambitions, etc., and his personal habits are about on the same basis with reference to their significance as to grade of intelligence as the preceding. They are difficult to gather in reliable form, and their relation to intelligence is in part known not to be close, and in part not known at all. School records stand on a much higher plane, and yet are recognized as by themselves entirely unreliable. The fact that feeble-minded not infrequently reach the upper grades is evidence enough that school records are no safe criterion. The direct mental examination included in the clinical syllabus sometimes has two other kinds of questions. First, questions asking directly about the status of different mental functions, such as the powers of observation, of attention, the memory ability, the general disposition, emotional reactions, and so on. These questions are supposed to be answered from the personal history of the child and from incidental observations the examiner makes in the course of the general examination. There is no question about the value of reliable data of this sort in diagnosing general intelligence. General intelligence is merely the sum total of the different mental functions, according to many of the best authorities. But the syllabus simply asks these questions. It suggests no methods of obtaining answers, and every psychologist well knows that to determine the status of any mental function in a given individual is in itself a serious task, which cannot be accomplished by gathering data from a personal history and through chance observations on the general reactions of a patient. Only the grossest sort of anomaly could be detected in this way. Second, the direct mental examination of the clinical syllabus sometimes includes questions

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that are intended to give direct evidence of the grade of intelligence. These may be of the nature of problems, puzzles, or questions of information the knowledge or ignorance of which on the part of the patient is supposed to indicate grade of intelligence. These questions are of the nature of mental tests, of which I will speak later. But they lack several essentials, the most important being lack of standardization in form and procedure, and lack of norms. The responses obtained may indeed be significant; they may measure intelligence. But we cannot know this without a knowledge of the different kinds of responses obtained with different grades of intelligence. The examiner of extensive experience will obtain a rough knowledge of this sort from the examination of large number of cases. But it is not adequate for making fine distinctions. The examiner is too often mistaken in his opinion as to what kind of response goes with what grade of intelligence, even when the question does test intelligence. He is equally often mistaken in assuming that the test question is a good one, when, as a matter of fact, it bears little or no relation to intelligence.

This concludes my specific criticisms of the clinical examination for grade of intelligence. A few general remarks may be added. The clinical examination is still in high favor with good authorities. This is due to several reasons. (1) There has been no other method claiming to give the required results until the appearance of the Binet-Simon tests. (2) Expertness in its use is a matter of long experience, which results in confidence, and inability to change readily to newer methods. (3) The detailed, systematized clinical procedure gives the appearance and impression, though illusory, of a thorough-going, exhaustive examination that inspires respect, and a blind faith in the accuracy of the results to be obtained with it. (4) There has not been sufficient time to acquire the necessary technical knowledge of the mental tests now in use, nor to thoroughly establish and demonstrate their reliability and practical usefulness. In the criticisms made I do not wish to imply that we should cast aside our clinical procedure for the newer methods. It should be improved, not discarded bodily. We need much serious investigation of just what the relation and correlation is between mental deficiency of different grades on the one hand, and the various actual and supposed causes and symptoms that have been discussed, on the other hand. When this has been done much of the present lines of clinical inquiry will be eliminated as of little value. The clinical syllabus should also be stripped at once of all questions for which there is no prospect of getting reliable information. The whole clinical procedure should then be standardized and systematized so as to eliminate the personal factor of the examiner. The grade of intelligence should be at once indicated from the objective results, and not estimated and judged through the experience and judgment of the examiner. Thus perfected, the clinical method would have an

important advantage over any present system of mental tests, is that it would be more comprehensive in scope, attack the problem from more different angles, and thus avoid, more than a limited number of mental tests can do, the chance errors and errors due to individual variations in just those particular functions and traits that are involved in the tests.

(b) Mental tests. 1. Some general principles. There are a number of important differences between a mental test and anything we have in a clinical examination. (a) In the mental test there is a known and close correlation between the results of the test and grade of intelligence. Just what the degree of correlation is, is indicated by established norms, which show us with what frequency, expressed in percentages, each grade of intelligence passes or fails in the test. (b) The conditions under which the test is given and the manner of giving it are standardized so that each individual gets exactly the same test in exactly the same way as every other individual, and as it was in the case of establishing the norms in the first place. (c) The interpretation and judgment of the examiner is mostly or entirely eliminated. The grade of intelligence is given directly by the objective results in the response to the test. When these conditions are fulfilled there are two ways in which the results of the mental test may fail to accurately indicate the grade of intelligence. First, it may not do so because the patient has not made his best effort to pass the test. Second, it may not do so because of an individual variation in the particular mental function, trait, or combination of functions, that are involved in the test used. It is well recognized that no single mental test will give an absolute correlation between results and grade of intelligence. Only a certain percentage, let us say seventy-five per cent., of the cases of a given grade of intelligence will pass a given test. The other twenty-five per cent. will fail because of the individual variation in the particular function tested, assuming all other facts to be eliminated. The former difficulty is relatively easily overcome. It happens but rarely that the examiner cannot establish a sufficient motive for the patient to do his best in a test, especially in the case of a reformatory inmate. I do not mean to say that the effort will be uniform from test to test or from individual to individual. But it will be nearly enough so for practical purposes. The latter difficulty is overcome in part by using groups of different tests instead of single tests, and then combining the results of all into one index of intelligence. The greater the number of tests in the group the more reliable will be the combined results, in direct proportion to the number.

2. The Binet-Simon tests. These general principles of the mental test are incorporated in the Binet-Simon system. It measures intelligence in terms of mental age by means of groups of tests, a group of five for each age, and norms for each individual test have been established. The examination of a patient involves

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the use of from four to six groups, that is, twenty to thirty individual tests, and the mental age is determined by the combined results of all. Let us consider their value in the examination of reformatory cases. We have noted that the average reformatory case is of adolescent age, and is of normal or nearly normal intelligence. In the accurate determination of the grade of intelligence of such a case the Binet-Simon tests are of little value. This is due primarily to the shortness of the scale at the upper end. In the 1908 series there are no tests for ages beyond thirteen. In the 1911 series tests for the ages of eleven, thirteen and fourteen are omitted, and tests for the ages of fifteen and for adults are added. These higher age tests largely lose their value through the absence of tests for the ages just preceding. Further, they do not by themselves give as good results as the lower age tests do. However, the important fact is that the scale cannot measure intelligence accurately higher than the mental age of ten even, because the average child attaining a mental age of ten with the tests does so, not by passing all the tests in this age group, but by failing in some of them and then passing some in the age groups of eleven and twelve. According to the rule of the system a child is given the mental age of the highest age group in which he passes all the tests, plus one year for every five tests he passed in age groups beyond this. For this part of the scale the highest age group in which the average child passes any tests at all is at least two years above the highest age group in which he passes all. Consequently, children whose true mental age is eleven or more must fall short of this in the mental age as determined by the tests. Since the true mental age of the average reformatory case is over ten, the tests can evidently have only a limited application.

The inference has been made from this by some that the Binet-Simon tests have little or no value at all in the mental examination of reformatory or similar group of cases. This claim is wrong. In practically every reformatory, if not in every, there are always a good number of cases with mental ages below ten. In fact, mental ages as low as six are not at all unusual. These are distinctly feeble-minded, and yet are, as a rule, not definitely recognized as such. The Binet-Simon tests furnish us a better means than does any clinical examination of determining the exact grade of intelligence of such cases. It gives us not only more accurate results, relatively practically free from the personal factor of the examiner's interpretations and judgment, but it is also much more expeditious.

There remains one more important matter to be considered in connection with the use of the Binet-Simon tests in examining reformatory cases. This concerns the use of the mental age as an expression of the grade of intelligence. The mental age was at first taken alone and directly as the expression of the grade of intelligence. This was an obvious mistake, as it can do so cor-

rectly only in the case of adults, and not in the case of children. The normal child six years old, for example, has the same mental age as the adult middle grade imbecile. Next, the difference between the age and mental age was taken as representing the grade of intelligence, especially as a means of drawing the line between the normal and the feeble-minded. Two years, three years, and four years were regarded by different authors as the limits of variation in the normal. By blindly following such an arbitrary rule as this, and by failing to recognize the effect of the shortness of the scale of tests at the upper end, together with the fact that the development of intelligence gradually decreases in rate with age and comes practically to a stop at the age of fifteen, the most serious mistakes have been made in the use of the tests, and especially with reformatory cases. For instance, in one study a seventeen-year-old child is classified as feeble-minded if the mental age according to the tests does not exceed thirteen. In another study a child is regarded as feeble-minded if the mental age is less than twelve and the difference between age and mental age is more than three years. Other instances equally bad might be cited. With such a procedure many children quite normal will necessarily be classified as feeble-minded, and many more who are only somewhat below average normal will fall into this class. In consequence we have the report from one reformatory, where a survey with the Binet-Simon tests was made, that eighty-nine per cent. of the inmates are feeble-minded! Similar reports come from other reformatories and Juvenile Courts. Such figures are extreme to the point of absurdity, and show in themselves that some grave error in method has been made.

The grade of intelligence cannot be represented by the difference between chronological age and mental age (1) because the rate of development of intelligence decreases with age, and a year's difference in age and mental age represents less and less mental retardation the older the child; (2) because the older the child the more time there has been for the difference to accumulate as the result of the retarded rate of development. This has been recognized, and a plan has been suggested to represent the grade of intelligence by the ratio of the mental age to the age. Thus in the following mental ages and ages, for example, this ratio is the same in all, and the grade of intelligence is the same in all, but the mental ages alone range from one to six years, as does also the difference between age and mental age.

Mental age .....	1	2	3	4	5	6
Chronological age.....	2	4	6	8	10	12

Expressed in terms of per cent., these cases are all fifty per cent. of the average normal intelligence. With this plan two points must be assumed arbitrarily in order to apply it to all cases. We must assume some age for the point at which development of intelligence stops. Such an assumption is always made, and we may place it at fifteen as accurate for practical purposes. In

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the case of placing it at fifteen, we must not divide the mental age of any case by more than fifteen for the age, no matter how much older he may be. If the mental age is above ten, allowance must be made for the shortness of the scale, and no definite statement can be made as to the exact grade of intelligence. Second, we must assume some ratio of mental age to age as representing the limit between normal and feeble-minded. Eight-tenths or .80 has been suggested for this limit. For practical purposes, I should place it at .75, and regard any case that is less than 75 per cent. of average normal intelligence as feeble-minded. With .75 as the lower limit of normal intelligence we get the following relations of mental age and age as representing this limit:

Mental age.....	3	4	5	6	7	8	9	10
Chronological age...	4	5.3	6.7	8	9.3	10.7	12	13.5

The use of this ratio, or the 'intelligence quotient,' as it has been called, to represent the grade of intelligence gives a uniform plan for all ages, and mental ages, and does away with the irregularities and errors introduced by taking the difference between age and mental age as representing the grade of intelligence. Obviously, however, it does not remedy the difficulty arising through the shortness of the scale at the upper end. The accuracy of the intelligence quotient as an index of intelligence must necessarily assume the accuracy of the mental age in the first place.

3. Mental Tests Without Established Norms. There are a large number of psychological experiments that have been labeled "mental tests," but for which there are no established norms. Several different selected groups have been published, intended to be means of diagnosing grades of intelligence. These are rather misleading. They are, by definition, not tests unless they enable us to test something. But how can we judge the grade of intelligence of a case thus "tested" when we do not know what kind of result any grade of intelligence will yield with these tests? The answer is that we do know at once after they have been used, only our knowledge of the norms is not so definite and certain. But any psychologist who has tried to devise intelligence tests and establish norms for them knows that this supposed rough knowledge of norms is illusory, and very inadequate for the purpose of making fine distinctions in grades of intelligence. Elaborated technique and scientific precision in administration does not alone make a test, but only an empty showing that deceives the layman. A test without an established norm in a scientific sense of the term can have but a very limited usefulness. Psychological expertness is no substitute for norms for mental tests.

### (c) Summary.

From this brief and necessarily dogmatic discussion we may now summarize the main conclusions.

1. Clinical methods of diagnosing grades of intelligence fail chiefly in that they regard a great variety of things as signs or



symptoms of grades of intelligence whose correlations with the latter are but little known, or known to be but slight.

2. Much of the clinical evidence gathered is unreliable because it is based only on memory of observation made years ago, and by parents or others who are naturally biased and usually very liable to erroneous report.

3. The Binet-Simon tests are inadequate for accurately determining the grade of intelligence of children much over ten and of normal or nearly normal intelligence, and are therefore not sufficient for the average reformatory case.

4. The Binet-Simon tests are more reliable than any other method at present available for the exact determination of the grade of intelligence of any case with a mental age of ten or less. A considerable number of reformatory cases are below this grade of mentality.

5. Serious mistakes have been made in judging the grade of intelligence of reformatory cases examined with the Binet-Simon tests from the mental ages obtained. The intelligence quotient is the best expression of grade of intelligence, and should be used in preference to other arbitrary rules that have been followed.

6. A scientifically established norm is an essential for any test of intelligence. Psychological expertness is no substitute.

7. We have at present no reliable means of diagnosing the grade of intelligence of the average reformatory case. Work now being done by a number of different psychologists will probably in the near future provide mental tests that will mark a big advance over present methods. A refinement of clinical procedure may also add to the solution of this problem.

## THE PRESIDENT'S ADDRESS.

QUINCY A. MYERS.<sup>1</sup>

Science stands constantly at attention and challenges every fact, every symptom, every characteristic, every variation, every sequence, every differentiation, every effect, in its search for causes and exactness. It takes nothing for granted which lacks certitude. When the domain of the human mind is entered, one at once encounters such a mass of suggestive and related facts and phenomena, such a correlation of conduct and mentality with respect to crime and its punishment and the treatment of the perpetrator, as to bewilder him. Few have the opportunity, and still fewer the ability, to view these matters in their true relations, and yet they lie at the very root of society. Tireless and patient investigation through years, such as comparison of individuals and classes of individuals, as to heredity, environment, congenital conditions and traumatic effects, present us with rational solutions as to the causes of many crimes, and thereby lead to provisions for the practical administration of criminal laws and efficient treatment of criminals and defectives. Such investigations deserve the greatest support as the most valuable aid to this complicated and most important aspect of social economy. It is daily becoming more evident that the public is becoming better informed and is coming to understand that the subject is of vital importance to the welfare of the race. The opportunities consequently are being multiplied and the funds are being provided for these investigations and for such practical demonstrations in the penal and correctional institutions as promise present relief and ultimate rational procedure in the administration of the criminal laws, and in the correction of individual cases. The same scientific movement prompts due observance of insanity, inebriacy, feeble-mindedness and other deficiencies in the causation of crime.

Investigations in penology promise much and have advanced the science along many lines, both practical and theoretical. Art may bind and shackle the hand; it may become conventional, as is frequently disclosed in architecture and allied arts, but science must distinguish, especially when we come to deal with the human mind and the human being in his relation to the social compact and the obligation of that compact to him, since both involve moral, social and economic questions of the highest and gravest importance. To the investigation of these questions, as involving the welfare of society,

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<sup>1</sup>Justice of the Supreme Court of Indiana. This address was delivered at the Washington meeting of the Institute on Oct. 22, 1914.

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this Institute is pledged, and for that purpose it exists and invites all who may see in its purposes and endeavors an opportunity for advancement of the social order to join its forces. It furnishes no place for platitudes, fads or fanciful theories; it stands for scientific tests of our practical relations to a very complex civilization. The alienist, the economist, the psychiatrist, the sociologist, the psychologist, psychopathist, the criminologist, the public administrator and the public at large are alike interested in the ultimate results which must flow from our observations in their different fields of labor.

The courts themselves, as related to the final drama in the career of the criminal or defective, are too engrossed with administrative features to be able, if they were competent, to deal justly, by which we mean intelligently, with each individual case; but present the data and reliable information upon which to base its conclusions and the court may, and will, deal justly with society and with the individual; but it cannot in the very nature of things, in our complex civilization, and in the face of the swift changes in our social order, give the attention which the individual cases ought to receive—for that is a work of specialization in itself—for lack both of time and opportunity, and this work, if done at all, as it must be, must be done by others. This lays special emphasis upon the field of work and the duty of this Association. It has been the frequent inquiry, if not the conviction, of those charged with the administration of the criminal laws, whether the accused is not often one who requires treatment rather than punishment. If courts are to be directed by legislative enactment, it is important that the enactment itself be not merely legislative empiricism, but scientific deduction from reliable sources of information. In other words, it is not exclusively a legal science. The premises become totally dissimilar when we are confronted with mental phenomena, whether of pronounced psychosis, or weak-mindedness, from those which obtain in the world of physical phenomena. This is exemplified in the modern treatment of criminals with respect to employment, notably with respect to the occupation of criminals on the public roads. The plan has been bitterly opposed for years on many grounds. Now it so happens that the plan has been adopted in a number of the states and the result has been so strikingly at variance with many preconceived notions, that many men who were opponents have come to be firm adherents of the system. It only demonstrates that mental attitudes may be largely controlled by physical conditions, and the apparent truth of yesterday is the contradiction of today by the very fact of trial and experimentation. That the era of understanding, and consequently of rational investigation into,

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the case of the individual misdemeanant and the criminal has set in, and that we have come to the point of distinguishing maliciousness from diseased mentality, and to recognize the subject as one for the specialist on many lines, is demonstrated by the increasing interest, the marked development of the allied sciences bearing upon the subject and the humane provision made at public expense to permit exhaustive study by capable persons to ascertain the true and just relation of the individual to his offense, and consequent invaluable aid to courts and administrative officers, with justice to the individual and society at large. It comes to the question of subjective treatment of the individual as against the purely objective question of placing offenders in jails or prisons.

We are informed by the last census that in the year 1910, 493,934 persons were committed to prisons, county jails and municipal prisons in the United States. It is a startling revelation. By the same census we are informed that there were in that year 187,791 persons in hospitals for the alleged insane in the same territory. The total number of persons in prisons, penitentiaries, jails, work houses and juvenile delinquents, January 1, 1910, was 136,472.

Committed in 1910.....	493,472
Discharged or paroled.....	468,277
Died in durance.....	1,505

Those in custody in 1910, charged as criminal offenders, were classified as follows, with respect to grades of offence:

Grave homicide .....	6,904
Lesser homicide .....	7,412
Major assaults .....	7,172
Minor assaults .....	2,870
Robbery .....	4,937
Burglary .....	18,307
Larceny .....	27,817
Fraud .....	1,518
Forgery .....	3,317
Rape .....	4,572
Prostitution and fornication.....	2,003
Vagrancy .....	6,956
Violation of liquor laws.....	2,153
Malicious mischief .....	718
Drunkenness and disorderly conduct.....	13,914
Other offenses and two or more offenses....	25,623
Not classified .....	279

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Among juvenile offenders in reformatories, consisting of 24,974, there were committed for:

Grave homicide .....	14
Lesser homicide .....	45
Lesser assaults .....	321
Minor assaults .....	2
Robbery .....	208
Burglary .....	2,039
Larceny .....	6,420
Fraud .....	37
Forgery .....	172
Rape .....	107
Prostitution and fornication.....	1,178
Drunkenness and disorderly conduct.....	210
Vagrancy .....	952
Violating liquor laws.....	5
Miscellaneous mischief and trespass.....	240
Other offences and two or more offenses....	12,958
Not classified .....	66

The relation of offenses to the years of the offender is not yet classified, but the relation will readily be seen from the character of the offenses as they are classified, to the ordinary experience, as to the years of life of their most ordinary occurrence.

The total number of persons enumerated as insane January 1, 1910, in the United States was 187,791, classified as follows:

Under 15 years of age.....	341
Between 15 and 19 years of age.....	2,212
“ 20 “ 24 “ “ “ .....	7,801
“ 25 “ 29 “ “ “ .....	14,083
“ 30 “ 34 “ “ “ .....	19,091
“ 35 “ 39 “ “ “ .....	22,856
“ 40 “ 44 “ “ “ .....	23,321
“ 45 “ 49 “ “ “ .....	22,874
“ 50 “ 54 “ “ “ .....	20,855
“ 55 “ 59 “ “ “ .....	16,383
“ 60 “ 64 “ “ “ .....	12,729
Over 65 years of age.....	21,881
Ages unknown .....	3,234

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## Total admissions in 1910:

Under 15 years of age.....	327
Between 15 and 19 years of age.....	2,539
“ 20 “ 24 “ “ “ .....	5,701
“ 25 “ 29 “ “ “ .....	7,027
“ 30 “ 34 “ “ “ .....	7,295
“ 35 “ 39 “ “ “ .....	7,495
“ 40 “ 45 “ “ “ .....	6,469
“ 45 “ 49 “ “ “ .....	5,681
“ 50 “ 54 “ “ “ .....	4,877
“ 55 “ 59 “ “ “ .....	3,068
“ 60 “ 64 “ “ “ .....	2,872
Over 65 years of age.....	6,161
Ages unknown .....	957

The feeble-minded enumerated in institutions January 1, 1910, were in number 20,731, classified by age as follows:

Under 5 years of age.....	98
Between 5 and 9 years of age.....	1,443
“ 10 “ 14 “ “ “ .....	3,649
“ 15 “ 19 “ “ “ .....	4,593
“ 20 “ 24 “ “ “ .....	3,574
“ 25 “ 29 “ “ “ .....	2,483
“ 30 “ 34 “ “ “ .....	1,729
“ 35 “ 39 “ “ “ .....	1,099
“ 40 “ 44 “ “ “ .....	707
“ 45 “ 49 “ “ “ .....	414
Over 50 years of age.....	567
Ages unknown .....	375

Admitted to institutions for feeble-minded in 1910, 3,825, classified as follows:

Under 5 years of age.....	139
Between 5 and 9 years of age.....	798
“ 10 “ 14 “ “ “ .....	1,086
“ 15 “ 19 “ “ “ .....	815
“ 20 “ 24 “ “ “ .....	370
“ 25 “ 29 “ “ “ .....	189
“ 30 “ 34 “ “ “ .....	174
“ 35 “ 39 “ “ “ .....	98
“ 40 “ 44 “ “ “ .....	66
“ 45 “ 50 “ “ “ .....	37
Over 50 years of age.....	94
Ages unknown .....	69

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The comparison of these tables with reference to the disclosed ages of greatest percentage of mental disorder, as related to the percentage of crime, during the same relative years of life, cannot but impress one with their possible relation to crime, more or less heinous, according as it takes place in the years of the greatest percentage of mental disorder and functional disturbance. The consequent tendency toward irresponsible offenses are clearly matters for the psychopathist, and not for judges and juries.

What relation the number of offenders not classified as insane (which is probably a misnomer) bore to mental infirmity cannot be known under previous systems, or even speculated upon, with any degree of exactitude. Certain it is, however, that in a marked percentage these offenders were proper subjects for medical treatment rather than for commitment to jails. No observing person can have failed to be convinced of the unjustness and the evils of indiscriminate commitment of all ages and conditions together in the common jail. There is no more efficient teacher of crime and indolence than the common jail. There the inexperienced, and perhaps irresponsible, are thrown with the depraved and hardened criminals, to be taught vice, immorality and crime at the expense of the tax payer, and destruction or abasement of whatever may exist of correct and acknowledged principles. They become educated as criminals and they degenerate both physically and mentally. Habits of idleness are formed without any compensation to the public; the class grows with the idleness on which it feeds, and to the great injury of the individual. Idleness is in itself probably as great a factor in the destruction of the individual as any other one factor of jail life. It is a forerunner of mental decay and moral degeneracy, whether in or out of prison. A large task and duty is therefore set before the public, and its conscientious and efficient discharge must depend upon such labors as this society and its kind bring to the problem; constant research and interchange of thought and experience, by which orderly, and efficient and permanent results may be obtained.

At the last session of this Institute a special committee was appointed on the subject of sterilization of criminals. Since that time the Supreme Court of New Jersey has held a statute on the subject invalid, as applied to the subject before it, viz.: epileptics as an unauthorized classification. The District Court of the United States in Iowa has held an Iowa statute in violation of the Federal Constitution, primarily on the ground that due process of law is violated in the matter of *ex parte* examination and for denial of trial by jury, and secondly, as an invasion of the right of entering the marriage relation.

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A law of Washington was upheld as against an attack on the ground of its being cruel and unusual punishment. In Indiana, after the application of a statute for sterilization in something like 690 cases, the practice was discontinued on the advice of the Governor, owing to doubt as to its constitutionality. We have had no legislation in any of the states on this subject since the Montreal meeting, except that Virginia enacted a statute authorizing and directing the Board of State Charities and Corrections to continue investigation of the question of the weak-minded other than insane and epileptics, and to report at the next session (1916) a comprehensive and practical scheme for the training, segregation and prevention of procreation of mental defectives. Asexualization laws of recent enactment also exist in California, applicable to cases of hereditary, insane or incurable chronic mania or dementia; also recidivists in state prison for rape or assault with intent to commit rape or seduction, after two convictions for other crimes, where the person gives evidence of being a sexual or moral degenerate or pervert, and in case of prisoners for life, whether there have been previous convictions or not. Idiot minors may also be asexualized without expense to parents but only with their consent, and idiot adults may be made to undergo the same operation with the consent of the guardian, the consent being in writing.<sup>2</sup>

Connecticut also has an act, enacted in 1909, applicable to persons with an inherited tendency to crime, insanity, feeble-mindedness, idiocy or imbecility, and there is no probability of improvement so as to render procreation advisable. The act applies to inmates of the state prison and state hospitals for the insane.

The Iowa act applies to all public institutions intrusted with the care and custody of criminals, rapists, idiots, feeble-minded, imbeciles, lunatics, drunkards, drug fiends, epileptics and syphilitics, moral and sexual perverts, and diseased and degenerate persons. The act is exceedingly drastic, providing even for asexualization of those convicted of prostitution or two convictions of other sexual offenses, including soliciting, or two convictions of a felony. Provision is made in the act for those affected with syphilis or epilepsy to have the operation of vasectomy and ligation of the fallopian tubes, and marriage of such persons is allowed. Heavy penalty is imposed for the performance of the operation other than for the reasons defined in the act, or for the purpose of destroying the power of procreation. This act has been held unconstitutional.

Kansas, Michigan, North Dakota and Wisconsin have like acts,

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<sup>2</sup>Chap. 363, Code, amendment of 1913.



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enacted in 1913, and Nevada, New Mexico and New York, enacted in 1912. The statutes vary in the boards, courts or authority to determine the cases in which the operation should be performed, but generally apply to habitual criminals, idiots, epileptics, imbeciles, mental defectives, insane and rapists. Similar proposed laws have been defeated in Arizona, Illinois, Minnesota, New Hampshire, Pennsylvania, Vermont and Virginia in the legislature. A sterilization act passed by the legislature of Oregon in 1913 was defeated by a referendum vote of the people. It is a far stretch of power, and great caution should be exercised along such lines. What the consensus of opinion may ultimately be or what the courts may generally hold may be conjectural; certain it is that very decidedly contrary views are entertained by many persons.

At the Montreal meeting there was also created a special committee, D, on the "Classification and Definition of Crimes." This committee, and special committee, E, charged with the "Investigation of feasible methods (1) of simplifying pleadings in criminal cases, (2) eliminating unnecessary technicalities in the procedure of appeals and reversals in criminal cases, to my mind present the most important work of this body now in hand. Whatever may have in the past been thought necessary or advisable in the charging part of an indictment or information, in its circumlocution and repetition, these archaic forms ought to be discarded. Whatever purpose, if any, they have served, growing out of the revulsion of the English race to former methods of criminal procedure, they should have no place in modern criminal procedure. They have only tended to protect the guilty from punishment upon technicalities which have led the lay mind to regard the system with suspicion, if not just contempt. They have furnished the inexcusable opportunity for many a man to be let loose upon a wondering and outraged public. There is no good reason why an indictment or information should not charge directly the fact that A. B. killed or murdered C. D., or that E. F. stole the property of G. H. It would be direct and certain to a common intent and understanding. Such is the present procedure in Canada, and it works admirably and without injustice. If John Smith kills or murders John Jones it is wholly immaterial by what means this was accomplished. If John Smith wants a bill of particulars let him have it on motion, but let the indictment stand with the direct and specific charge of the accomplished act, and we should have very much less complaint of criminal miscarriages of justice than we now have.

In many of the states there has already been much accomplished in the way of classification and definition of crimes, but much may

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still be done in many, if not all, the states. This is particularly applicable to the subjects of larceny and embezzlement, which especially should be respectively classified and defined. The failure of legislatures and the courts to mark the real distinction which exists between the two offenses has led to many escapes from justice.

Virginia in 1914 enacted a law for the commitment to insane hospitals of persons charged with or indicted for crime and found or believed to be insane at the time appointed for the trial. The court or the Commonwealth Attorney, believing any person charged with crime to be irresponsible, the court may commit to a hospital for the insane and appoint experts to examine him, pending the determination of his mental condition,<sup>3</sup> and those found insane on trial, or becoming so after trial and conviction, may be committed to the hospital for the criminal insane.<sup>4</sup> It also established an institution for the treatment of the feeble-minded.<sup>5</sup> An act was also passed by that state for the voluntary admission of persons to the state hospitals for treatment, excluding those temporarily deranged by the use of drugs and alcohol,<sup>6</sup> and those in urgent need of treatment and care as dangerous insane and a menace to the public, except those suffering from delirium tremens or drunkenness or delirium from fever.<sup>7</sup> It is to be regretted that the characterization of these unfortunates by these beneficent acts should be as "insane."

New Jersey in 1914 provided for an indeterminate sentence law and board of parole<sup>8</sup> and for a wage system of employment of prisoners and the administration of the wage<sup>9</sup> (a) for the care of dependents of the prisoner, (b) for the benefit of prisoners after discharge or parole, and (c) for certain limited costs of his prosecution. This act is of a kind with the acts of 1911 and 1914 in Massachusetts, authorizing payment of wages to persons incarcerated, but discharged or acquitted, and shows a marked trend.

Vermont in 1913 and Virginia in 1914 enacted most stringent laws respecting delinquent, dependent and neglected children, and in defining a delinquent child. Both acts cover every phase of association, living, housing, presence of and conduct of others, and conduct of the child, conceivable, as detracting from the moral advancement

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<sup>3</sup>Acts 1914, 242.

<sup>4</sup>Acts 1914, 542.

<sup>5</sup>Acts 1914, 665.

<sup>6</sup>Acts 1914, 424.

<sup>7</sup>Acts 1914, 665.

<sup>8</sup>Acts 1914, 562.

<sup>9</sup>Acts 1914, 562.

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of the child, such as associating with criminals or being about them, or vicious or immoral persons, or those addicted to the use of deleterious drugs or frequenting saloons, brothels, gambling places, billiard and pool rooms, and many others.<sup>10</sup> A similar act has been in force in Indiana since 1905. (Burns, 1914, 1641.) A new and far-reaching probation law was enacted in Virginia in 1913 with many new features of administration and subjects of commissions jurisdiction.

A parole board was created in Maryland in 1914 for the purpose of advising the governor as to pardons and paroles, while Massachusetts provided for an indeterminate sentence, the power of parole; and a parole law in operation in Maine is reported as giving good results in its effect on prisoners, and a like law is recommended for passage in Maryland.

A compensation law is now passed in Louisiana for the benefit of dependents of the prisoners and for the prisoner on his release or discharge.

Zeal for aid and reformation and interest in the weak, vicious and criminal must not warp from the duty to society, for, however much the state is interested in developing the best there is in humanity, it owes quite as high a duty to its citizenship and society to protect them, and the difficulty, as well as the importance in their last analysis, lies in discrimination and well-balanced application of trained minds and experienced investigators to particular cases in order that really responsible persons may not, by simulating irresponsibility, escape just punishment. For it is undoubtedly carried to the extent of bringing the law, or rather its administration, into disrepute and generating in the public mind a disregard which is well calculated to destroy its efficiency as a public agency, and dulling that sense of public obligation so essential to its supremacy and observance.

At the same time that we are bound to recognize the startling number of morons of society, it does not by any means follow that they are not morally and legally responsible, and the problem is to determine responsibility or irresponsibility in individual cases. What shall be done with the subnormal and the borderland cases? Extremists both ways are likely to be found on all such questions, but there is a practical midway in dealing with criminals in courts, if happily we may find it.

The psychopathic laboratory, the testing house, at once suggests itself, and the results of the experimentations in the laboratory, in connection with the Municipal Court of Chicago, has astonished all

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<sup>10</sup>Acts of Virginia, 1914, 696; Acts of Vermont, 1913, 150.

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who have taken the time and pains to study them and have attracted wide attention. The reports of Dr. Hickson, superintendent of the Psychopathic Laboratory, and Dr. Healy, director of the Juvenile Psychopathic Institute of Chicago, furnish data of inestimable value and food for grave reflection. One of the common notions which fastens itself upon the mind disordered is that society is organized against it, and the consequent result is that it creates the conditions on which it feeds. This is peculiarly true with respect to the discharged criminal; he is rarely extended a helping hand, he grows morose, sick at heart and hardened toward society, and frequently prefers the oblivion of a prison to contact with the outer world. Another powerful factor in the making of criminals is the failure of the state to see to it that every alleged crime, however impecunious or poor the alleged culprit, be investigated by competent and impartial attorneys. The result is that the cases of the poor are not properly presented. This begets a hatred and distrust of organized society and of courts and produces anarchists. If the state owes to society the duty of ferreting out and punishing the guilty, it owes no less a duty to see to it that the poorest man, woman or child shall have his, her or its rights fully and fearlessly and capably protected. To this end, in accordance with the constitution of this Institute, I recommend to its careful consideration the subject of the Public Defender of equal grade with the public prosecutor. Personally I regard it of the highest importance and am convinced that not only is it a duty the state owes its citizens, but my opinion is that it will go far to restore confidence in the administration of the law and respect for it, and to impress on the mind of the really guilty the justness of their punishment. On the other hand, it will be a long step in removing the distrust of the law among the people at large, for there can scarcely be a thing more calculated to make bad men than unjust and inappropriate punishment. It stirs every fighting fiber in any man who has red blood in him, and that man is bound to become an enemy of society. As an economic question I apprehend that it would be a paying proposition for the public.

While not strictly within the objects of this Association, it is cousin germane, and I therefore recommend investigation of the subject of payment of wages to prisoners, both from an economic and humanitarian standpoint. Possibly there should be gradations as related to the character of the crime, so as to exclude offenders guilty of heinous offenses and protection against the maligner, and those who have means of providing for their dependents. I suggest also as worthy of serious consideration the question of reimbursement, so far as pecun-

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itary consideration can do so, of those who, after prison service, are found to be innocent. The cases are comparatively few, and the charges on the state would be a negligible quantity, but the practice of such provision may well challenge attention. It appears to me to be as little as should be done for an innocent man and those on whom the blight of a prison career may be unjustly cast.

I venture also to suggest the advisability of eliminating from constitutions and statutes the provisions which prevent comment on the fact of a defendant refusing to testify. Are we not too tender of him. He is not in the situation he was in former ages, and why should the fact that he is able to throw light on the question and refuses to do so not be the subject of reasonable and just inferences as to the truth. Perhaps he ought not be required to testify, and yet on the Continent of Europe he is so compelled, and I am not sure but they are justly leading us in that particular, and am inclined to the opinion that they are, but in any event silence ought to amount to a waiver of the inferences which it may, and frequently does, indicate. Akin to this wide difference in procedure is that of the admission of hearsay evidence and conclusions. As related to both these wide departures from Anglo-Saxon procedure, it is not to be overlooked that the Continental views of fact are themselves purists and trained deductionists and capable of proper estimate of the force of such evidence and of the inferences to be drawn from it. The acknowledged conservatism of lawyers can be safely relied on to protect human liberty and rights of persons and property. I am not prepared to say that one charged with crime or an offence should be compelled to testify, but we are doubtless a long way from the time when the public mind will be prepared for such a departure. But it is apparent that there must be some more practical and efficient and less archaic methods applied in the courts, where, under present system, a guilty man has more than an even chance, and it is not going too far with the natural tendency to secrecy as to crime and its actual secrecy as a rule to say that the state is put to too great a disadvantage and that there is too tender a regard for the criminal, for the greater, and more astute criminal he is, enables him under present conditions to exploit himself as a martyr. He is entitled to no such protection in this age by organic law, and much less by technical construction and rules of procedure, which have no real relation to the question of guilt or innocence, and they should be swept aside in all cases where the offense is clearly shown.

The broadest possible opportunity for education of criminals, both

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in manual arts and in a general way, ought of course to be maintained, to the end that inducement to good citizenship may be held out and hope spring up in their breasts for the coming of a better day, with a wider horizon and a broader and more just view of their relations and duties to societies, to themselves and to those who should be the objects of their care and the subject of the solicitude of men worthy of the liberty of freemen.

## CRIME AND DISEASE<sup>1</sup>

VICTOR C. VAUGHAN<sup>2</sup>

In my presidential address before the American Medical Association last June, I showed by evidence collected from most diverse sources and extending from the earliest historical records to the present time that in epidemics man, in the mass, reverts to the savage state. I will not repeat the facts collected in that paper, but will refer all interested in this subject to my address given at Atlantic City. I believe that the statements made at that time will bear the most critical study. The present contribution should be regarded as an addendum to my former paper. What can be said about the relation between crime and disease in this country at this time?

This is an important question and one that seriously concerns our national welfare. Unfortunately the reliable data available leaves much to be desired. It is a question which should be answered, if at all, with the greatest care. In the first place, both disease and crime are difficult to define. Any marked departure from the physiological normal may be included under the term disease. It must be understood that the mortality and morbidity rates are not necessarily the same. The former gives no indication of the extent to which idiocy, imbecility, and feeble-mindedness exist. Because the inmates of prisons eat well, are strong in muscle, suffer but little from the acute diseases, and live long is no indication that they are physiologically sound. It merely shows that they are protected from the acute infectious diseases, and that these causes of death have been markedly diminished during the past thirty years is abundantly demonstrated. The death rate during this time has been reduced from twenty to fourteen per thousand and this holds good for both the honest and the dishonest. In fact, those under prison discipline and control have been protected from the infections more easily and certainly than the public at large. The water and food supplies of our penal and reformatory institutions have been guarded more scientifically than those of our villages and cities, while the isolation of prisoners protects them from the infectious diseases in general. The inmates of our penitentiaries are better protected from infection than are our school children, laboring men and the public at large. It follows from this that we cannot employ mortality rates in comparing the health of social delinquents with that of normal men.

While a definition of disease is difficult, that of crime is more so. In a broad sense, crime may be defined as behavior which is detrimental to the public good. The state specifies certain acts as harmful and provides penalties against those who indulge in them. In doing this the state standardizes the punishment to fit the enormity of the act. In this way crime becomes the violation of the law. In the different stages of intelligence through which man has passed, the laws

<sup>1</sup>Read before the American Prison Association, at St. Paul, Oct. 8, 1914.

<sup>2</sup>Dean of the School of Medicine, University of Michigan.

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have varied widely. An act regarded at one time as criminal may under different conditions or by a different people be considered a virtue. It follows that the laws are an index of the moral intelligence of the people. A healthy, growing nation is one in which there is the greatest unanimity in ideals and purposes with a willingness to make personal advantages subservient to the public good. A decadent people is one in which the individual seeks self-advancement with a disregard of the rights and privileges of others. In the former the citizen thinks first of his duty while in the latter he is constantly demanding his rights.

What is the evidence of the existence of crime in this country at this time? If we turn to statistics to answer this question, the result is not pleasing. In a recent paper before the American Statistical Society, Hoffman states: "Our judicial statistics are, unfortunately, rather unsatisfactory and inconclusive. The statistics of prisoners, as ascertained by the census, are fairly trustworthy since 1850. In that year the ratio of prisoners to every one hundred thousand inhabitants was 29.0, which by 1860 had increased to 60.7, by 1870 to 85.3, by 1880 to 131.5. The latest figures are for the year 1910 when the ratio was 121.4, but the question may be raised as to whether there has not been an actual increase, when full allowance is made for probable omissions of certain classes of prisoners considered in the previous enumerations. Our statistics of crime, as far as they can be relied upon, indicate that matters have not improved, but rather to the contrary, that there is a tendency toward an increase in lawlessness as best indicated perhaps in the statistics of homicides of American cities. Combining the statistics of deaths from homicide for the two cities of Boston and New York, it appears that the ratio for 1839-43 was twenty-three per million of population and fifty-three for 1908-12. For thirty American cities during the last thirty years, the homicide ratio has been forty-nine per million for the first and second decades and seventy-five per million for the third."

Judge Wier says that in this country "250,000 persons whom the law never touches are engaged in the systematic pursuit of crime. There are four and one-half times as many murders for every million of our population today as there were twenty years ago. Ten thousand persons are murdered in this country every year and of the murderers only two in every hundred are punished."

I desire to avoid extreme statements but I am trying to make a diagnosis and purpose to propose a line of treatment. In order to do this, we must first ascertain the nature of the disease and the extent of involvement. In the first place, inquiry into the causes should be made. No less an authority than ex-President Taft thinks that the prevalence of crime is largely due to defective administration of the criminal law. He says: "It is not too much to say that the administration of criminal law in this country is a disgrace to our civilization, and that the prevalence of crime and fraud, which is here great-



ly in excess of that in European countries, is due largely to the failure of the law and its administrators to bring criminals to justice."

Tarde in his valuable work on Penal Philosophy furnishes much information concerning the factors determining the prevalence of crime. He says: "The moral sense has an organic base (which does not necessarily mean to say a cerebral *place*) and consequently its disappearance or its deadening can only be explained by means of a gap or a lesion, by an atrophy or an injury to the brain, or by an imperfect nutrition of its cells; by some misfortune in other words." He thinks that heredity plays an enormous role in the production of crime and quotes the telling statistics of Marro on this subject. He says: "One has been thrust into it (crime) from birth; this is the ordinary case. The majority of murderers and notorious thieves began as children who had been abandoned, and the true seminary of crime must be sought for upon each public square or each crossroad of our towns, whether they be large or small, in those flocks of pillaging street urchins who, like bands of sparrows, associate together, at first for murauding, and then for theft, because of a lack of education and food in their homes." He lays stress upon the instinct of imitation and adds: "And must we not, unfortunately, recognize the fact that from the out and out criminal to the honest merchant we pass through a series of transitions, that every tradesman who cheats his clients is a thief, that every grocer who adulterates his wine is a poisoner, and that, as a general thing, every man who misrepresents his merchandise is a forger?" He points out that crime increases in times and countries where opportunities to get rich quick prevail. The progress and success of greed leads many to model themselves "*per fas et nefas* after those who have enriched themselves." The mobility of our population has favored the growth of crime. When men get away from the community in which they are best known and are brought into conditions wholly new to them, moral restraint looses its hold on them. The rush to urban centers from rural life upsets many. The ease with which social and political preferment is secured by wealth sets a disastrous example. In the middle ages, one of the most lucrative forms of swindling was the selling of false relics and indulgences, now it is the selling of fictitious stock. The probability of escaping punishment is undoubtedly a powerful factor in increase of crime. The inefficiency of our methods of criminal procedure must be evident. In many cases of criminal prosecution the judge is hardly more than a weak umpire in the legal contest. Of the jury trial, Tarde says: "Its unfitness is being shown, its contradictions and blunders are being laughed at; it is being treated just as men began to treat the Sybil with its rebus which was no more incomprehensible than certain verdicts in later times. There is no rascal who fears it any more, and no honest man who respects it."

It must be admitted that all the factors mentioned above and many more have played a part in the increase of crime in this country during the present generation. The man who is detected in picking a

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pocket may be punished, but how many men have enriched themselves by selling worthless stock by false representations? The mother who intentionally poisons her child by the administration of an opiate may be tried and convicted, but how many children have been killed by drugged soothing syrups and how many manufacturers and venders of these poisons are now behind prison bars? Only a small percent of the cocaine and opium preparations annually used in this country can be legitimately accounted for. Under promises of cure of tuberculosis and other diseases, alcoholic and opiate nostrums still have a large sale.

Goddard concludes that at least fifty percent of all criminals are mentally defective. Among Juvenile offenders the percent is often found to be much higher, in some as great as eighty. The Mass. Commission for the investigation of the White Slave Traffic found fifty-one percent of three hundred prostitutes feeble-minded, and all doubtful cases were put in the normal list, although many of these were of low intelligence. "Some of the women seen at the detention house were so under the influence of drugs or alcohol as to make it impossible to study their mental condition. . . . These drunken, alcoholic and drug stupified women were all recorded as normal."

It must be admitted that every feeble-minded, alcoholic and drug addicted person is a potential criminal. Still the making of these classes and their growth and multiplication proceed under the protection of the law. The feeble-minded child is not born a criminal. He is born too weak in mind to take care of himself in a proper manner under the complex social conditions in which he finds himself.

We should be most concerned with the prevention of crime. This is of more importance than the reformation of the criminal. Its breeding places should be discovered and disinfected. In harmony with Mosby, I believe that the eradication of crime is a medical or a sanitary question. The procedure must be authorized and sustained by the law; but the methods and agencies must be those of preventive medicine. My purpose in preparing this paper is to suggest a plan for eradicating at the same time and by the same agencies both disease and crime. The greatest factor in preventive criminology must lie in the recognition of the potential criminal and surrounding him with conditions which will prevent his potentiality from developing into actuality. At present, the law has no hold upon him until he has committed some crime and it often happens that he commits many crimes, which are likely to grow in enormity, before the law can fasten on him. As he grows in crime he infects his associates and begets his kind. Moreover, on account of the serious defects in our methods of criminal procedure the hold that the law gets even on the hardened criminal is a loose one from which he escapes in a large percent of cases.

My plan provides for a full time intelligent health commissioner in each city of twenty thousand or more and for every county of thirty thousand or more. He shall have a laboratory equipped for

the examination of water, food, blood and everything that may be involved in a medico-legal investigation. He will have as his assistants competent inspectors who can report not only on public sanitation but can go into any home, advise, assist, coerce if necessary, in the removal of unsanitary conditions. Much of this work can be best done by properly trained women. Even in this favored land there are thousands of homes in which conditions are such that it is as impossible for the children in them to grow into good citizens as it is for oranges to grow in arctic regions. Some of these untoward circumstances are due to poverty, others to ignorance, and others still to vice. The children of such homes grow up to fill our almshouses, institutions for the defective, insane asylums, reformatories and prisons. These breeding places of disease, ignorance and crime must be located, quarantined and disinfected. At present we permit disease, ignorance and crime to breed in our midst and the normal man is compelled to support their progeny and in doing so he pays not only in time, money and energy, but often with his life. The thriftless village up the river pollutes the water of the city with the typhoid bacillus. The ignorant milkman slaughters the innocents with his germ laden product. The ignorant and unteachable consumptive scatters far and wide the seeds of his disease. The gilded palace of prostitution in the city entices the farmer's sons into the gates of hell. The good intentioned but untaught mother poisons her children with infected food and dust laden air. The father spends his wages in drink, becomes a brute at home, pauperizes his family, and begets defective children. The son becomes a loafer, follows his father to the dram shop, and goes on the straight road to crime. The daughter, probably defective through inheritance, sells her person for tawdry raiment and spends the short remnant of her life in trafficking in vice and disease. These and many other evils flourish and come to fruition in this country at this time. What is the result? For every time the clock strikes the hour, day and night through all the seasons, year after year, a murder is committed in this fair land. Our almshouses, insane asylums and prisons are not large enough to accommodate the delinquents. The police of our cities are busy with criminals and no rural community is long free from them.

Every home must be open to the sanitary inspector. In many of those in which she is not needed, she will learn something that will help her elsewhere. In those in which she is needed she will prove the greatest factor in race betterment the world has ever known. To the honest and deserving poor she will carry material aid. To the ignorant who are willing to learn, she will carry the light of knowledge. To the vicious, she will direct the powers of legal compulsion. To some extent, noble, self-sacrificing women are, even now, doing work of this kind, but the function should be assumed by the state and universally extended. No one, save the women thus engaged, have any adequate knowledge of the social conditions existant today in certain strata. No one else can realize how far we are from real civilization and how close we are to barbarism. These women come

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daily under clouds of superstition and ignorance as dense as those that shrouded the earth in the dark ages.

This work to be most effective must be a part of the health machinery. The courts have decided that health administration is a matter of police control. For sanitary inspection every man's house may be entered and examined. It should not be necessary to wait until some offense has been committed before a visit can be made. This vitiates the whole thing. The sanitary inspector should visit every home at intervals and defective ones as frequently as may be desirable.

This work should be directed and regulated by specially trained jurists. Both the physician and the administrator of the law will need a training not given today in our medical or law schools. They must be learned in criminology. Our universities must provide forensic institutes in which the abnormal, defective and criminal can be studied. The methods of criminal procedure must be greatly modified and the jury must be replaced by a bench of trained psychologists. The object should be the prevention of the development of the criminal so far as possible and those who grow up in spite of these efforts should be eliminated in the most humane way and their reproduction rendered impossible. I quite agree with Tarde who holds that the criminal is not the product but the excrement, of civilization and this is true whether he picks a pocket or steals a railroad.

However, preventive medicine in order to render its highest service to man, must go much farther than I have so far indicated. Every individual should undergo a medical examination at least once a year. This should be as thorough as that demanded for the largest policy in the best life insurance company. The effective wealth of a nation lies in the health and intelligence of its citizens. Each sound inhabitant is an asset, every defective is a burden. Before the coming of the white man, the territory now covered by our nation on this continent gave bare and precarious subsistence to a few thousand inhabitants, now it feeds, clothes and furnishes with the necessities of life nearly one hundred millions besides feeding other millions on its excess. In the centuries to come, its material production must be multiplied many times. This can be secured only by growth in intelligent effectiveness. The nation must protect itself from the breeding and multiplication of the unfit. This must be done in a scientific and humane way and I know of no other than the one here suggested. It strikes at the root of the matter and is just to all. These examinations must be official and the results recorded. No two consecutive examinations should be made by the same physician in order that there may be no collusion between the examined and the examiner, and furthermore, that an infirmity overlooked by one physician may be detected by another. These examinations must be made at state expense, because the primary object is for the public good and the rich and poor should be treated alike. There should be opportunity for appeal from the findings of one official and in such cases the matter should be referred to a board of expert diagnosticians. Those unfit

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to propagate should be so placed that this function is impossible. Those with transmissible diseases should be so guarded, so long as they remain in this state, that no one will be endangered by them. Those whose infirmity affects only themselves should have the best treatment possible. If able to pay for this service, they should be permitted to select their own medical attendance, otherwise the State should provide it. Some may say that this is rank Socialism, but if so it is of the best kind and will save from both anarchy and the slow degeneration which tends to grow in every country. It puts emphasis on our national health which is the most valuable asset a people can have. The good will profit by it, multiply and possess the earth. The evil will be eliminated in the most humane way. The young alcoholic will be stopped in his downward path, while the old and confirmed will be so placed that he cannot beget degenerates. The syphilitic husband will no longer infect his wife and pass his curse on to the next generation. The normal citizen will have his life of usefulness prolonged and his effectiveness for good multiplied. We have heard too much about individual rights and liberties and too little about personal responsibilities and duties. No man can limit his sins to their effect upon himself. "No man liveth to himself alone." Every man is to some extent at least his brother's keeper. A nation is an aggregation of individuals for the purpose of mutual helpfulness and there should be no room in it for those whose lives are harmful to the best interests of the whole.

At peace with all nations, in the enjoyment of a domestic prosperity never before known, the malignant growths of greed and degeneracy are feeding on our vitals. Shall we submit to the surgeon's knife and be made sound or will we enjoy the present as best we can and leave the future to our children?

## THE HYGIENE OF JAILS, LOCK-UPS AND POLICE STATIONS<sup>1</sup>

OSCAR DOWLING<sup>2</sup>

In the winter and spring of 1910-1911, I inspected every jail, lock-up and police station in Louisiana. Those of you who are familiar with conditions in these relics of barbarism will not be surprised that I had just one pleasant experience. It was in Cameron, a parish which lies on the gulf and in which there is no railroad. To get there, one must await a thrice-a-week boat from Lake Charles or hire a motor at an expense of fifteen dollars (\$15.00). It took all day to get to the parish site and just sixty-five minutes to inspect the two hotels, five stores, the court house and wharf. The sheriff said we were through, when I inquired, "Where is your jail?" He led the way back to the court house and pointed out a building with windows and doors wide open. I said, "You have no prisoners in Cameron?" He replied, "Oh, yes, we give them the key and they lock themselves in at night." It was a pleasant shock. The sheriff and his confreres had probably never read of the parole or honor system; likely they didn't know of experiments in prison reform, but prompted wholly by the dictates of kindness and common sense, they had solved the problem of humanitarian penology. It is needless to say the jail "scored" poor.

Unfortunately, in most instances, these buildings were deplorably bad, both as to construction and upkeep. Within a stone's throw of magnificent churches and commodious court houses, there were Bastiles which would have done credit to the Louis' of tyrannical memory. As an example, a jail, typical of many others, is a brick structure. The interior is lined with sheet iron. In three cells, each about eight by ten, there is no provision for heating, nor is there any sanitary convenience, nor water. Two cells have each three small windows about five and a half feet from the floor, and one cell, one window. The prisoners confined in these cells are not provided with beds. They have blankets only. In one large room the cage, ten by fifteen feet, is placed. On the day the inspection was made there were five negroes in the larger division of this cage. Hammocks were swung from one side to the other, side by side with no space between. The portion of the cage separated by uprights and cross pieces contained sanitary closet equipment and the faucet for water supply. For bathing there was a large tub which could be filled from the faucet by using a bucket or pitcher. No privacy was afforded. On being asked how they got a bath, one of the men who was sitting on the tub arose and said, "in this." His reply to the question how often they took a bath was, "Whenever their folks" could bring them clean clothing. The room was heated by a stove outside the cage.

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<sup>1</sup>Read before the American Prison Association, St. Paul, Oct. 8, 1914.

<sup>2</sup>President Louisiana State Board of Health, New Orleans.

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The whole building was distressingly damp, so much so that a little boy running his hand along the wall said, "It's been raining in here." Even with the fire during the day the occupants of the cage must have suffered from cold at night. One dares not think of the condition of prisoners in the other rooms—better, vaults—in cold weather.

In what we call our historical archives are many letters from occupants of these dens of torture. On leaving, I took two which lay on the top of the pile. Both are signed and investigation proved the statements true. One reads:

"Dear Sir: I hope you will accept this favor and consider same as worthiness as conditions here certainly needs prompt attention. I am confined in the city jail here and have no complaint other than the sanitary conditions are without doubt the worse that could be mentioned. The jail is of ancient build with very poor ventilation almost unbearable. We have two rooms in which prisoners stays. Near as I can guess each room is about 18x28 with one small window in each with double bars and one hall about 6x28 with one window. Now just to think after working all day outside in sun and dust and come in at night you wash your hands and face over the toilet stool and before we finish washing the floor is almost a pool under our feet, sometimes we have a broom but most times we dont, we have to put our heads over the toilet stool and drink as the only hydrant is placed right over the stool and some of the boys have no change of clothing and it requires wrenching out before going to bed, we have a tub that holds about ten gallons of water to do our laundry and bathe in and there is sometimes from fifteen to twenty waiting in turn to use it and the old bed clothing from all appearances was place here when was in her infancy, full of vermin and bed bugs and the water is hot enough to make a person sick to drink it but not hot enough to kill the vermin and bugs. The food is reasonably good only we have to eat with our fingers, also especial attention is that if you get sick the officials will not give any medicine or send a doctor as I had experience one day this week. We have a shower bath apparatus but it is out of order for some time and poor prospects to remedy same soon.

"Well, Dr. I can substantiate all the above writings but if you could ease in unexpectedly some time soon you would be fully convinced. Well I will close hoping to hear from you at once." "P. S. Dr. please advise me at once so I will know what to do, as I will write a letter and have it published by several leading papers asking all humanity to help better conditions. I notify you first as you are our legal authority in such cases. Yours Resp."

The second of these is of like import:

"Dear Sir: Im a Prisner In the . . . . . jail & the Bedding

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Hav not Ben changed nor aired Sence I was Pup up the 2nd of December & the Bed Bugs is geting a Start. & the Pipes from the water closets all Impty Just out Sid the wall & Sence the wether Hav got worm the oder is something Terrible. & the Jail is not Screened & the flyes In Day is all most unbairleble & the mosquitos at night Dount allow no Sleeping for thire is no Bars in the Jail. we air fed 2 meals a Day with coffee & Rice & Bread & Solt meat for Breakfast which will do But for Diner it is White Beans or Black eyed Beas with fat Boiled meat and corn Bread the Beans create Such volum of Gas in my Stomach tel it causes me to suffer most all the time. we hav no chang except Sum Salet Sum times with peas for Diner. the above is true & I can face this Letter any whire & if it is In your Power In the capasity you fill to correct those mistakes I Shall Bee Grately oblige to you for so Doing Resp....."

Not only in Louisiana but in other states, with few exceptions, county jails are ill-ventilated, foul-smelling structures, with no room for exercise and scant, if any provision and no incentive to personal cleanliness. The inmates are exposed to every peril of fire and disease and the food is ill-prepared, ill-served and scanty in supply. Were there only one jail or prison of this character it would be a reflection on our assumed humanitarian, not to say Christian attitude toward the unfortunate. That they exist is a terrible indictment against the intelligence and altruism of our social order. Their tolerance is a communal sin.

The inadequacy of water, light, air, and sanitary conveniences are inexcusable, but to me the dire and distressing negligence in upkeep is more inhumane because easily remedied. I asked at one place, "where the prisoners bathed" and received a prompt if cold-blooded reply, "We bring them here to work not to bathe." In one jail the sheriff pointed out with much pride the clean whitewashed walls. I carry a scalpel and pocket electric lamp and by use of the former dug up layers and layers of dirt. He made the "air blue" because his deputy "had no more sense." I am sure if the money invested annually in barrels of disinfectants were expended in soap and labor to apply, these places of incarceration would be infinitely improved. So general is the custom of covering up their bad odors with the obnoxious disinfectant, I sometimes think it would be wise to prohibit the use of all fluids intended for this purpose. My cook who spent one night in the lock-up gave me a vivid description. I forbear to repeat her words, but in substance the odor was so bad she sat on the step and "cried and prayed all night." I know of one parish jail built at a cost of ten thousand (\$10,000) dollars which is never free from the vilest odors.

On the first inspection tour after our visit, every officer in each jail was sent a letter explicit in detail as to the condition and improvements necessary. Many buildings were condemned. As an example, I quote a report of 1911:

"The parish jail is in a very insanitary condition and gives



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evidence of not having been properly cleaned for some time. I suggest the free use of the spade and the hoe followed with a 'treatment' of hot water and lye. It will require a considerable amount of elbow grease. Then the walls and cages should be painted. The law requires that every inmate in every prison in the State be given a bath at least once a week. Evidently this has been overlooked here. . . . I saw that some of the prisoners were far from being clean. The building (it was new) has been erected without arrangements for proper ventilation. The hot water supply seems defective, the heating apparatus being placed on the sidewalk adjacent to the building."

It became necessary to speak in even more drastic terms after inspection in many places, for illustration:

"The jail is poorly constructed, in a state of dilapidation, and can not be considered other than prejudicial to health. therefore, it becomes necessary to condemn same. . . . Should you have occasion to incarcerate white and colored prisoners of both sexes it would be absolutely impossible to segregate. The building is very poorly kept and we urge upon the Police Jury the necessity of seeing that the court house and jail are given the proper attention."

Opinions concerning the purpose of imprisonment and measures of control are widely diverse, but of humane treatment there can be one view only. Brutal punishments are universally condemned. If the facts are known no community will stand for torture of any kind. Unfortunately, many good citizens do not know that prisons and jails, as they now are, are places of torture. Had they the realization that arises from a visit of inspection they would in their righteous wrath apply remedies.

In legislative history, laws, ordinances, rules and regulations of governmental and social agencies are always more advanced than public opinion. In this country representatives of the people desire to go on record as progressive; they pass laws and ordinances which embody reform ideas; they do not hope to get these enforced at the time, or even in the immediate future. They consider this a form of education in any social movement. There are many of these concerning prisons in every section.

In our own State, in the past, the Code rules of prisons, jails and lock-ups were almost universally ignored. We can not assert now that they are observed wholly or by all, but inspection has accomplished something. Much cleaning has been done, many jails repaired and new ones built. Formerly, in scope the requirements were inadequate. The regulations have been revised and made to include many important details as well as essentials. In part, they now read as follows: "All prisons, or other places of detention where prisoners are confined shall be properly constructed that the occupants may have the benefit of the application of modern principles of sanitary science.

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The building in each case shall be fire-proof, properly ventilated, adequately heated, sufficiently lighted by day and night, connected with water and sewerage system, or provided by some means with a supply of water for drinking and bathing and adequate closet conveniences. The bathing facilities should include separate apartments for white and colored.

The building shall contain at least four separate rooms that the sexes and races may be segregated. There shall be an apartment also for those sick with communicable diseases. All cells shall have one or more outside openings to ensure light and fresh air. The interior shall be painted white and floors made of cement and waterproof.

The floors, walls, and ceilings of room or cell shall be scrubbed twice a week and iron work painted twice a year under the direction of the health officer or coroner. It shall be the duty of the officer in charge to compel each person to bathe when entering the jail and at least once a week while confined therein. Soap and individual towels shall be provided.

A room or cell occupied by any patient-prisoner suffering from a communicable infectious disease when vacated shall be disinfected.

The water closets shall be kept in sanitary condition.

Cooking and eating apartments shall be operated according to the rules prescribed for restaurants and hotels.

All plans and specifications for new jails and repairs or alterations for old prisons shall be submitted to the State Board of Health for approval.

Cooking and eating apartments shall be operated according to the State Board of Health for approval.

The executive officer of these institutions shall furnish the State Board of Health with quarterly reports giving the number of prisoners confined at the time; the new prisoners received, also number discharged during preceding quarter, number sick, nature of illness and termination. This report shall include information relative to condition of prison, when cleaned, fumigated, repainted, and such other data as may be required by the coroner or board of health."

These rules may seem drastic, and in the details of requirements, mandatory beyond what is practicable. But the conditions that obtain are a menace both to the health of the imprisoned and the public. To meet the emergency, nothing less than specific, comprehensive regulations are permissible, and in their enforcement, there is no laxity or discrimination.

The plan of jail which we now suggest was worked out to meet the requirements of the code. In size, and I might add in cost, it is designed to fit the needs of the greater number of our parishes. In this plan every sanitary necessity is provided for. Copies of these drawings have been sent to the police juries throughout the state and we have received letters which encourage us in the belief that within the next two years many of these buildings will be remodeled or replaced by new structures.

The greatest obstacle we have met is the opinion that our require-

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ments are unreasonable. We now have pending a suit against one of the richest parishes in the state. It dates back to 1911 when the jail was condemned. The judge refused to grant an injunction; we asked for a rule of nisi which has not come up for trial. Several times the authorities have proposed repairs, but to reconstruct the building is from a sanitary standpoint, impossible. The authorities think we are just determined to be unreasonable. This parish is typical of many—the population is largely rural, with negroes about seven to one. The white citizens are not aware of conditions, but they do know that there is a class of negroes who much prefer the jail to the field or to their homes, and rightly they think that if the jail is made comfortable, the parish will have to support even a greater number of these lazy, shiftless darkies than are now confined there for months in the year.

In reference to cleanliness of buildings of this type, the following received from the mayor of one of our small cities is interesting:

“I beg to acknowledge receipt of your letter of the 10th inst., and note fully its contents. Replying to same beg to say that while the calaboose may not look like the dining hall of the ——— Hotel, it is kept as clean as the parties that occupy it keep themselves when allowed to run at large. The party that made the report never enter the calaboose only when he is drunk and down, then a hog pen suits him as well as the inner room of King Solomon's Temple. I have never thought that the state or any municipality was expected to keep a Haven of Rest for its law breakers. We have never had a prisoner to take sick while in the care of the town of. . . . . while on the other hand we have taken a few sick and turned them loose in splendid health.”

He then finds fault with me for not having remedied a nuisance in the city and finishes with a parting thrust, “Now back to the point. This calaboose matter looks like the Gnat and Camel story to me.”

Lest you may think we do not receive any co-operation, I shall digress here to say that a number of jails condemned have been torn away and many have been painted and cleaned; in one at least—I happen to know the jailer very well—the prisoners dare not spit on the floor.

Since the first trip with the health exhibit cars over the state in 1910-1911, when all jails were visited and scored, we have twice inspected every one which was rated poor or bad on first inspection, and once since, those with a score of fair or good; so within three years every one of these buildings has been inspected twice and the poorest, three times.

The results, given publicity, stirred up some interesting political rows in which sheriffs, deputies, police jurors (county commissioners) took part. Sometimes it was a question of who was to blame—police jury and sheriff both disclaiming responsibility; sometimes of author-

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ity as to supervision of deputy; sometimes a mix-up of funds appropriated for upkeep of court house and jail, often clearly a disinclination to give up patronage, or to condemn the work of the employee, possibly a relative, more likely, a political henchman holding down a lazy job.

Inspection is a good club; it is not popular with those who are careless—a clean proof of its necessity. To be effectual, it must be managed on a basis of follow-up and after so much “grace,” by prosecution. In these as in many other matters sanitary, I believe in education, but I believe also in application of the law. The public should be sharply brought to a sense of its own responsibility; if through its public servants, well and good.

Every man, who for the protection of society, is incarcerated has a right to be personally protected by this same power which assumes the responsibility of depriving him of his liberty—that is society. The relation is mutual. Society is represented by its officers, therefore, if the sheriff in charge of the jail, or the marshal in control of the lock-up, tolerates conditions prejudicial to the health of prisoners, society, in their persons, should be indicted. There is no better object lesson than the trial of an official. In putting this principle into practice, that is, holding officers responsible, I have not met with much antagonism. Last year, I found a jail overcrowded; it had fifty-one prisoners with a capacity of eleven. I ordered the forty removed. The sheriff said, “Where?” I replied, “That is up to you. Those men must be given decent accommodations—at least as to air and room to sleep—and at once.” A place was quickly found—the basement of the court house. Had the order been ignored six hours, I should have appealed to the courts for immediate action.

In protecting the prisoner from effects of unhygienic surroundings, the health officer is protecting the health of the public; for this reason, I believe in enforcing without delay every practicable demand. For a new building, it is necessary to give a reasonable limit. In our state, it takes an election to vote a special tax; the “red tape” incident is a tedious proceeding which often entails delay; initial steps for a jail, the plans of which were approved last week, were taken almost two years ago. For repairs easily made there should be immediate demand. Every parish has a contingent fund; it is elastic when the authorities see fit—why not when the comfort and health of these unfortunates is involved? I think the health officer should have no patience with uncleanness; soap and pearline are cheap; hot water can be plentiful; work, hard work, is a blessing to those confined within four walls, therefore, a filthy condition is simply a matter of culpable negligence on the part of those in charge.

I have found a surprising ignorance as to what is cleanliness. One sheriff tried to argue with me that the toilets were clean. I ordered boiling water, a mop and soap and gave him a practical lesson. “In the name of humanity” to quote from one of our letters, let every man who has authority invoke the law in the interest of a condition of spotless cleanliness in these, at best, unhealthful environ-

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ments. The complaint most general is that prisoners, especially negroes, are so inured to dirt in all phases, that it would require unremitting effort to keep things clean. This is one instance where retribution would be just,—the careless and uncleanly could be made to bear the burden of the work. If the jails were cleaner, kept so by the occupants, there would be fewer negroes within their walls.

I think every fair-minded person, no matter what his philosophy of penal servitude, will agree that the most hardened criminal should be provided with fresh air, clean floors and walls, bedding free from vermin and wholesome food plentiful in quality and well cooked. This is justice to the individual.

In connection with maintenance, the plan of making with the sheriff the contract to feed prisoners, which often is sublet to some irresponsible party, is a bid to fraud and greed. There is no supervision, often no bills submitted showing cost of food, and hence a temptation to serve food inferior in quality and as small in amount as possible. The prisoner has no redress; if he complains, he makes an enemy of the jailer; if he writes a protest to the authorities, it may never reach them and if it should, likely it is thrown into the waste basket or considered a record of one more rebellious criminal who should be sent to "the pen." I consider this a very serious phase of the hygienic welfare of these unfortunates. In one of our parishes \$2,500 for prisoners' keep is provided in the budget whether the jail has occupants or not. You can readily see how this plan, as well as the other, might be used much to the sheriff's advantage.

The features of the jail regime mentioned are those which are necessary for a minimum of comfort and for the preservation of the health of the prisoners. There are other conditions which should receive consideration—one, the incarceration without segregation of the sick and the well. It is a matter of record that many of the men in the prisons throughout the country have syphilis and tuberculosis, likewise in the jails and lock-ups. Can you imagine any greater torture than to be confined in a cell a few feet square with a consumptive or a syphilitic? Yet, I know from observation in the prisons and jails I have visited that it is a common occurrence for a well man to have this experience. It is not my purpose to exaggerate the menace presented by these conditions; I could not if I would.

From the point of view of the imprisoned alone, in justice and mercy, nothing should be left undone to provide cleanly surroundings and freedom from contact with the diseased. For the welfare of society it is equally imperative.

Physical environments react upon the mental to a degree which even yet, we do not fully comprehend. The man who, while awaiting trial three to six months, suffers cold and other hardships in the parish jail, degenerates morally at a tremendous rate. He may come out broken in health from poor food, or the victim of infection; but he is sure, if forced during that period to endure filth and vermin, to hate the social order which sanctions "man's inhumanity to man."

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This attitude of mind becomes concrete in conduct and society reaps what it has sown.

It would be a satisfaction to enter more deeply into the mental or psychological phase of this subject, but this aspect would lead us far afield, and into a discussion of all the fundamentals of the penal system.

It was my intention, according to request, to tell you more in detail of the work in Louisiana, but as I have indicated—our conditions are much the same as in other states. We are trying to improve by as frequent inspections as possible and by local publicity as to conditions good or bad. We reinspect at frequent intervals. Developments in each parish are noted in the columns of the daily press and when opportunity presents itself, we take such action as is necessary. Every appeal is investigated and whenever there is need we invoke the strong arm of the law. I think I may say without being considered boastful, that the conditions in our parish jails and town lock-ups are fifty per cent better than they were in 1910. We think this creditable only because we have done the best we could. With a larger appropriation, which would permit a whole-time prison inspector, more could be accomplished. We hope for this help in the near future. While jails have been improved and a number of new ones built, I consider our most effective work has been in convincing the authorities that the Board of Health is determined that every prisoner in the State shall have a clean cell, free from vermin and at least two square meals a day—and this whether sheriffs make money or not.

I have not touched many of the interesting aspects of the subject of the present penal system. Being familiar with its details, it goes without saying I have little sympathy with the inhumanity and stupidity of the methods in vogue, and that I think in the Twentieth Century with the experience of the ages, for our enlightenment it is unpardonable that in this we still walk in "trodden paths."

THE RESULTS OF MENTAL AND PHYSICAL EXAMINATIONS  
OF FOUR HUNDRED WOMEN OFFENDERS—WITH  
PARTICULAR REFERENCE TO THEIR TREAT-  
MENT DURING COMMITMENT.<sup>1</sup>

By Edith R. Spaulding.<sup>2</sup>

This study does not take into consideration complete medical or complete psychological detail, and is, therefore, not offered as a scientific production in either of these two directions. It is not intended for a treatise on the causation of criminalism; rather has the attempt been made to form a working classification of the mental and physical potentialities of four hundred inmates, that a better understanding may be had of the material with which one has to build in an institution of this type.

When an individual enters a reformatory institution, the natural constructive thought is, "Of what use can the institution be in successfully placing him as a responsible person in the community?" In working out such a problem, two factors must be considered—first, to what extent is the institution able to help him with its available resources; and, second, what is he able to contribute to the institution? These two factors react upon each other, for if the most efficient workers can be recognized at once and given the most responsible positions, these positions should return work to the institution of the highest standard possible. In accomplishing both of these things with the best success, a thorough understanding of each individual as he enters the institution is valuable.

In order to understand any person well, and the ways in which his anti- or pro-social attitudes have been formed, it is apparent that a knowledge of his past life is essential. In understanding his past life, and in order to give as nearly as possible the proper proportion of responsibility to factors of heredity, training and environment, it is necessary to know as much as possible of his mental and physical potentialities. Without such knowledge in the study of persons in a reform institution, many mistakes in diagnosis may be made. Some individuals may be pushed into situations which they are incapable of handling, while others who are capable of much bigger things will be allowed to persist in the way of least resistance (which they may always have taken) because, to the casual observer, they appear to be defective mentally.

A rough classification has been made of the mentality of four

<sup>1</sup>Read before the American Association for Clinical Criminology, St. Paul, Oct. 7, 1914.

<sup>2</sup>Resident Physician, Massachusetts Reformatory for Women, South Framingham, Mass.

## MENTAL AND PHYSICAL EXAMINATIONS

hundred women, who have been studied in detail, psychologically, in the following groups:

1. Those showing good native ability.....	88	22.0%
2. Those showing fair native ability.....	59	14.7%
3. Those with poor native ability or dull from physical defects .....	79	19.7%
4. Those showing mental subnormality (slight mental defect).....	107	26.8%
5. Those showing feeble mindedness (marked mental defect, i. e., the moron group).....	67	16.8%

The subnormal group (4) includes those who are slightly defective and in other classifications might be called the highest grade of feeble-minded. The moron group in this classification (5) includes those who are definitely defective—with a mental age corresponding roughly to that of a child from seven to twelve years. Included in this class are four cases which should be justly classed as imbeciles and represent a mental age under seven years.

The tests used in estimating these results are those recommended by Dr. Healy of Chicago; the Binet-Simon tests; and various other psychological and psychiatric tests which have been used as the occasion demanded. Besides these tests, the amount of school training has always been inquired into, including regularity of attendance and the type of school attended, as well as the school grade that was reached. Tests in general information, arithmetic, etc., have then been given to estimate the amount of knowledge that was attained, or which has been retained. The results of these examinations have been tabulated, and are given in the accompanying charts in each of the various classes above mentioned.

This classification is not satisfactory from a psychological point of view. It has been made after the various mental faculties have been studied in detail, in order to form some general conception of the individual's mentality, as a working basis for those interested in her, and shows in a general way with what mental grades we have to deal. Such a classification, especially in cases showing extreme irregularity, is difficult, and sometimes impossible. Among the epileptics and those showing psychopathic tendencies this is particularly true. These cannot be classified in such a general way and require a much more detailed description and classification. Perhaps six cases out of the four hundred have been omitted on this account, while the other irregular ones have been placed in the class which corresponds with their more proficient characteristics. The following eight charts represent the results of the study of four hundred consecutive cases.

The routine examination of the patients, both mental and physical, as well as the bacteriological work, has been done largely by the assistant physician, Dr. Elizabeth A. Sullivan. We are indebted to her also for help in compiling these statistics.



EDITH R. SPAULDING

CHART I. SHOWING AGES, TIME SPENT IN SCHOOL AND GRADES REACHED.

	Total No. and Per Cent	Old- est	Young- est	Avr. Age	Number below 30	Per Cent.	Number above 30	Per Cent.	Grist. No. yrs. in schl.	Smilt. No. yrs. in schl.	Avr. No. yrs. in schl.	Highest Grade reached	Low- est grd.	Avr. age grd.
Good	88 or 23%	71	17	24.5	71	80.7	17	19.3	12	0	9.3	College	0	1.4
Fair	50 or 14.7%	66	18	26.0	45	76.3	14	23.7	12	0	6.6	Graduated from Grammar High School	0	6.1
Dull	79 or 19.7%	64	17	29.8	47	59.5	32	40.5	13	0	6.5	3d yr. High School	0	5.6
Subnormal	107 or 28.8%	46	17	28.6	66	61.7	41	38.3	12	0	6.1	2d yr. High School	0	4.5
Moron	67 or 16.8%	81	17	28.1	50	74.6	17	25.4	10	0	5.7	Grammar 9th Grade	0	3.7
Total No.	400				279		121							
Total %..	100			27.4		70.5		29.5			7.4			

Chart I shows the time spent in school and the grades reached. The oldest in each of the five grades from "Good" to the "Moron" group will be seen to be as follows: 71 years, 66 years, 64 years, 46 years, and 81 years; while the youngest in each class is either 17 or 18 years of age. This shows a similar range in the ages of all five classes. The average ages of the different classes are, respectively: 24.5 years, 26.0 years, 29.8 years, 28.6 years, and 28.1 years; while the average age of the four hundred women is 27.4 years. This shows that the "Good" class includes the youngest women, which is also borne out by the next figures, which show that while 70.5% of the whole number are below 30 years of age, 80% of the "Good" class are below 30 years, the other percentages being 76.3%, 59.5%, 61.7% and 74.6%, respectively. This is interesting from a prognostic standpoint, for of the four hundred women, 71, or 17.7%, show good native ability, and are below 30 years of age, while 116, or 29% of the whole number, show good or fair mentality, and are below 30 years of age.

The range in the number of years spent in school is about equal in the various classes, there being women in all classes who have attended school 12 or 13 years, and also those who have never attended school. The average number of years in each class, however, shows a decrease, as follows: 9.3 years, 6.6 years, 6.5 years, 6.1 years and 5.7 years. The consistent order in this case is probably accounted for by the fact that the length of time spent on the child's education is, in the majority of cases, influenced by his own inclination for study, and by the results which he attains. Thus, those making but little headway and showing no inclination for school are put to work as soon as possible. That the average time in school of all classes is only 7.4 years is evidence of their poor educational advantages as a class.

There is some inconsistency in the highest grades reached. The "Good" class has one college graduate; the "Fair" only grammar school graduates; in the "Dull" class the third year in high school was reached; while one in the "Subnormal" class reached the

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second year in high school at 19 years of age. There was one "Moron" who stated that she reached the ninth grade in the grammar school. The fact that a subnormal individual reached the high school may be accounted for by the automatic promotion of pupils after two years in each class.

The average grades reached, however, show the expected consistency, as follows: 7.6, 6.1, 5.6, 4.8, and 3.7. This is particularly interesting as the mental classification in five classes was made on tests for native ability alone and was not influenced by the grades reached. These figures show how closely the two general classifications correspond. As added evidence of the slight education which they have received is the fact that the average grade reached by all classes is only 5.7, or between the fifth and the sixth grades. This, however, is two years behind the grade which would be expected from the average time spent in school which was 7.4 years.

It has been necessary to depend upon the woman's word in many cases, regarding the grade which she reached. Although the verification of this is a factor in the social investigation, still there are many cases where the individuals have attended school in foreign countries, or many years ago in this country, or in some remote district which is inaccessible for investigation. In such cases it has, of course, been impossible.

CHART II. SHOWING APPROXIMATE RESULTS OF  
SCHOOL WORK OUTSIDE.

	Good Results.		Fair Results.		Poor Results.		No School.	Total Number.	
Good .....	51	58.0%	26	29.5%	10	11.4%	1	88	22.0%
Fair .....	11	18.6%	20	33.9%	26	44.1%	2	59	14.7%
Poor .....	7	8.9%	25	31.6%	41	51.9%	6	79	19.7%
Subnormal ....	3	2.8%	16	15.0%	84	78.5%	4	107	26.8%
Moron .....	0	0	3	4.5%	59	88.0%	5	67	16.8%
Total Number and Percents.	72	18.0%	90	22.5%	220	55.0%	18	400	100.0%

Chart II shows approximate results of school work as judged by tests given during the mental examination. These results have been divided into three classes—"good," "fair," and "poor," and refer to the actual results as compared with the number of years spent in school. This judgment has been a very lenient one and allowance has always been made for the length of time which has elapsed since the school years and the amount which it is possible for the average person to forget in subjects in which little interest was taken.

Here again the results of the educational work in the different classes corresponds consistently with the original classification—the "good" results in the various classes being as follows: 58%, 33.6%, 8.9%, 2.8%, and 0%. The "poor" results are equally consistent, being 11.4%, 44.1%, 51.9%, 77.5%, and 88% in the five classes. The percentages of those who have had no schooling are 1%, 3.4%, 7.6%, 3.7%, and 7.5%, showing no significant feature, but rather the result of chance.

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The total figures give evidence of the small benefit derived from their already too small education—but 18% of the whole number show “good” results, 22.5% show “fair” results, while 55%, or over half, show “poor” results. 4.5% have received no education whatever.

Chart III shows the detail of the grades reached in school, according to the individual’s own statement. This is of interest merely to intensify the evidence of their lack of education or lack of progress while in school. The grades are divided into the following sections:

CHART III. SHOWING GRADES REACHED IN SCHOOL—IN DETAIL.

	No. Sch.	Per Cent.	Grades 1-3	Per Cent.	Grades 4-6	Per Cent.	Grades 7-9	Per Cent.	High School 1-2 3-4	Per Cent.	Col-lege	Per Cent.	Total
Good.....	1	1.1	1	1.1	23	26.2	51	58.0	9	2	1		88 or 22.0%
				2.2		28.4		86.4		12.5		1.1	59 or 14.7%
Fair.....	2	3.4	5	6.5	21	35.7	31	52.4	0	0	0		79 or 19.7%
				11.9		47.6		100.0		0	0		79 or 19.7%
Dull.....	6	7.6	11	13.9	18	22.8	41	51.9	2	1	0		107 or 26.8%
				21.5		44.3		96.2		3.8	0		107 or 26.8%
Subnormal....	4	3.7	28	26.2	47	44.0	27	25.3	1	0	0		167 or 41.8%
				29.9		73.9		99.1		0.9	0		167 or 41.8%
Moron.....	5	7.5	22	32.8	26	33.8	14	20.9	0	0	0		67 or 16.8%
				40.3		79.1		100.0		0	0		67 or 16.8%
Totals.....	18	4.5	67	6.6	135	33.5	164	41.7	12	3	3.8	1	400 or 100.0%
				21.6		54.6		96.3		0	0		

Note:—The arrows refer to total percentages of preceding columns.

1. No school.
2. Grades I-III.
3. Grades IV-VI.
4. Grades VII-IX.
5. High school (1st and 2d year).
6. High school (3d and 4th year).
7. College.

The percentages of those who have not advanced beyond the primary grades, including those with *no school* in the five classes, are 2.2%, 11.9%, 21.5%, 29.9%, and 40.3%. Those who have not advanced beyond the sixth grade, including *all below* these, are 28.4%, 47.6%, 44.3%, 73.9%, and 79.1%. Of those reaching the high school, there were 12.5% of the “Good” class, none in the “Fair” class, and 3.8% of the “Dull” class, .9% of the “Subnormal” class, and none of the “Morons.” Of the four hundred women, 21.1% (nearly a quarter) had not progressed beyond the primary grades; 54.6% had not progressed beyond the sixth grade in the grammar school, while 96.3% had stopped their education somewhere in the grammar school. Only one woman, .3% of the whole, had graduated from, or even attended, college.

Chart IV shows the actual results of education according to the tests given. These results may be expressed in detail by show-

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ing what kind of educational work they would be fitted for, should their education be continued. The following arbitrary grading has been chosen:

1. The Primary grade includes those who are unable to read or write English; this will include some foreigners who can perhaps read and write in their native language.

2. Intermediate Grade No. I includes those who do not know the elementary processes of arithmetic (including the multiplication table), although they can read and write.

### CHART IV. SHOWING ACTUAL RESULTS OF EDUCATION, ACCORDING TO TESTS GIVEN AND SUBSEQUENT CLASSIFICATION.

	Primary.	Intermediate I.	Intermediate II.	Advanced.	Reading Class I.	Reading Class II.	Totals.
..... 1	1.1%	8 3.4%	30 22.7%	49 55.7%	3 2.3%	13 14.8%	88 22.0%
..... 3	5.1%	13 30.4%	19 23.3%	20 33.0%	1 1.7%	4 6.3%	58 14.7%
..... 8	10.1%	25 31.6%	25 31.6%	14 17.7%	5 6.3%	3 2.5%	79 19.7%
..... 7	6%	65 60.7%	28 24.3%	4 3.7%	5 4.7%	0 0.	107 26.3%
..... 13	26.9%	20 53.3%	0 13.4%	0 0.	1 1.5%	0 0.	67 16.8%
and Total							
..... 37	9.3%	144 35.0%	99 24.7%	87 21.7%	14 3.5%	19 4.8%	400 100.0%

3. Intermediate Grade No. II includes those who know the elementary processes of arithmetic but are unable to do long division, and are correspondingly ignorant in other subjects. These are not yet ready for advanced work.

4. The Advanced Grade includes those who can do long division, are correspondingly well grounded in other subjects, and are still young enough to do active mental work.

5. Besides these there is a "Reading Class," well named by Mrs. Hodder the "Library Class," which is both Elementary and Advanced. The Advanced Reading Class is for those who appear to be too old to obtain good results from the more active mental work, but on account of their previous education and fairly good mentality would probably show the best results from a systematized course of reading, which if followed by a discussion of the books read, should stimulate their interest and increase their general information.

The Elementary Reading Class is for those with insufficient educational training and with advanced age, or for those with limited mentality who would appear to be benefited by a similar reading course, which though still under supervision and with subsequent discussion, should be much simpler in its nature.

The percentages of those in the different classes requiring elementary training are as follows: 1.1%, 5.1%, 10.1%, 6.5%, and 26.9%. This is 9.3% of the total number. Of this 9.3% (37 women) six are foreigners, only two of whom can read and write in their own language. Those who are ready to enter the second Inter-

### CHART V. SHOWING THE GENERAL PHYSICAL CONDITION OF THE WOMEN IN THE VARIOUS MENTAL CLASSES.

	Good Physical Condition.	Fair Physical Condition.	Poor Physical Condition.	Totals.
Good .....	27 30.7%	28 31.8%	33 37.5%	88 22.0%
Fair .....	13 20.3%	26 44.1%	21 35.6%	59 14.7%
Dull .....	13 16.5%	25 31.6%	41 51.8%	79 19.7%
Subnormal .....	21 19.6%	33 30.8%	53 49.5%	107 26.3%
Moron .....	13 19.4%	18 26.9%	36 53.7%	67 16.7%
Totals .....	86 21.5%	130 32.5%	184 46.0%	400 100.0%

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mediate grade was 22.7%, 32.2%, 21.6%, 24.3%, 13.4%,—24% of the total number. Those ready for advanced work are 55.7%, 33.9%, 17.7%, 3.7%, and 0%—21.7% of the total number. The hopeful aspect of these figures is the 55.7% of the "Good" class who are ready for active study of an advanced nature. It shows the great need for educational work in an institution of this kind. Those in the advanced reading class were 14.8%, 6.8%, 2.5%, 0, or 4.8% of the whole number, while in the simple reading class there were 2.3%, 1.7%, 6.3%, 4.7%, and 1.5%—3.5% of the whole number. Thus we see that nearly one-quarter of the total number are ready for advanced work, while over 45% need the most elementary training.

Chart V shows the general physical condition of the women in the various mental classes. One of the significant features of this chart is that the percentage of women in "good" physical condition in the mentally "Good" group is over 10% more than in any of the other mental classes, the various percentages being 30.7%, 20.3%, 16.5%, 19.5%, and 19.4%. A second significant feature is that the largest percentage of *poor* physical conditions is found in the "Moron" group, the percentages of those from the "Good" class downward being 37.5%, 35.6%, 41.8%, 49.5%, and 53.7%. The 51.8% with *poor* physical conditions found in the "Dull" group—nearly as large as that of the "Moron" group (53.7%)—is consistent with the idea that part of this dullness is the result of physical defect.

The total results are also significant—only 21.5% (less than one-quarter of the whole) show *good* physical condition; 32.5% are in fair condition, and 46.0% (nearly one-half of the women studied) show very *poor* physical condition. This is a conservative estimate.

The following summary of the 46.0% (184 cases) shows in a very general way the types of cases with a poor general condition.

1. Malnutrition .....	75 cases
2. Neuropathic or psychopathic.....	20 cases
3. Pulmonary .....	9 cases
4. Cardiac .....	9 cases
5. Orthopedic .....	5 cases
6. Inflammatory or surgical conditions.	22 cases
7. Convalescent .....	4 cases
8. Alcohol and drugs.....	40 cases

Total..... 184 cases

This does not mean, for instance, that there are but nine cases of endocarditis among the four hundred women, but rather that there are nine cases who, during practically their entire stay in the institution, have had to have special work chosen for them on account of the lack of compensation in their cardiac condition.

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Many of these have spent much time in bed, and during the remainder of the time have required some sedentary occupation.

This classification does not take into consideration pathological conditions of the eye, ear and nose and throat, which will be reported on later by the ophthalmologist and laryngologist of the institution, and which represent a large majority of the cases. As all cases of active tuberculosis are transferred to another hospital, the third division refers to questionable cases or to those with healed lesions.

It also does not include the abnormal mental types among the four hundred women, which are as follows:

1. Giving history of epilepsy.....	61 cases	15.2%
2. Showing manifestations of hysteria.....	44 cases	11.0%
3. Having been confined at some time in a hospital for the insane.....	16 cases	4.0%
4. Showing marked neuropathic or psychopathic tendencies .....	31 cases	7.7%
<hr/>		
Total.....	149 cases or	37.2%

(Three cases which had been in insane hospitals were also epileptics, which explains the total of 149 instead of 152.)

For the discovery of such a large percentage of epilepsy we are indebted in a large degree to Mrs. Hodder's Sociological Department, which is under Miss Stedman's immediate supervision. Through the social history it has often been possible to obtain some clue to "fainting attacks" or "spasms" which when inquired into later by the physician or followed up in the home investigation have developed into a definite epilepsy. It is true of cases which are the most unmanageable that either major or minor epilepsy is frequently found on further investigation to be the basis of their instability.

Another interesting fact is that besides the 61 cases showing epilepsy in the individual herself, 39 cases, or 9.7%, come from families in which there are cases of epilepsy. Many cases of this kind are very unstable and often seem to display the psychic equivalent of epilepsy in outbursts of temper and general control defect.

Of the four hundred women at least 205, or 51.3%, are in need of outdoor work. This includes cases with pulmonary conditions, the excessively neuropathic, the psychopathic and many alcoholics and drug habitues.

On general principles one would say that women admitted for alcoholism were in need of outdoor work as a help in building up their nervous strength and giving them greater power of resistance against their habit when they return to the community. However, this is not always the case, and there are often reasons why outdoor work, even for alcoholism, is contra-indicated. Of the seventy-three women committed for this offence, only forty-three

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appear to need outdoor work. Some are too feeble (our oldest is 81 years old), and others, with apparently superabundant health, seem

CHART VI. SHOWING THE NUMBER OF WOMEN INFECTED WITH, AND THOSE FREE FROM, VENEREAL DISEASE.

Syphilis and Gonorrhoea.....	166	41.5%		
Gonorrhoea alone.....	160	40.0%		
Syphilis alone.....	18	4.5%		
86.0%				
Doubtful cases.....	11	2.8%		
"Clean women".....	45	11.2%		
14.0%				
			Syphilis.	Gonorrhoea.
Results positive clinically and with laboratory tests.....	69	37.5%	237	72.8%
		of 184		of 326
Results positive with laboratory tests only.....	104	56.5%	74	22.6%
		of 184		of 326
Results positive from clinical history or symptoms only.....	11	6.0%	15	4.6%
		of 184		of 326
Totals .....	184	46.0%	326	81.5%
		of 400		of 400

rather to need occupations which through the responsibility required or the training given, will increase their self-respect of their efficiency and give them a new sense of responsibility.

Forty-four women, or 11.0%, of the four hundred have required sedentary work on account of inflammatory cardiac and orthopedic conditions and convalescents from surgical operations.

Chart VI shows the number of women infected with, and those free from, venereal disease.

Forty-six per cent of the four hundred women give evidence of having syphilis, while 81.5% give evidence of gonorrhea; 41% show symptoms of both diseases, while 40% show symptoms of gonorrhea alone, and 18% of syphilis alone.

This makes a total of 86% who are infected with one of the two venereal diseases. Two and eight-tenths percent of the remainder are doubtful cases, and only 11.2% are apparently clean women and free from either disease.

Of the 184 cases of syphilis, 37.5% were verified by the clinical history plus a positive Wasserman reaction; 56.5% gave a positive Wasserman reaction alone, while 6.0% were verified by clinical symptoms only. In the gonorrhoeal cases, 72.8% were verified both clinically and by bacteriological examinations, 22.6% by bacteriological examinations only, and 4.6% by clinical symptoms only. These figures are appalling when one considers the influence that many of these women will have later in the community in spite of the most intensive treatment administered in the institution, and the temporary clearing up of all symptoms before they leave.

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CHART VII. SUMMARY OF MENTAL AND PHYSICAL CONDITIONS AS AVAILABLE FOR INSTITUTION WORK.

Class 1. (Capable.)	
Good physical condition with good mentality.....	27
Fair physical condition with good mentality.....	28
Good physical condition with fair mentality.....	12
Fair physical condition with fair mentality.....	26
Total number = 23.2% of 400.....	93
Class 2. (Mediocre.)	
Poor physical condition with good mentality.....	33
Poor physical condition with fair mentality.....	21
Good physical condition with poor mentality.....	13
Fair physical condition with poor mentality.....	25
Good physical condition with subnormal mentality.....	21
Fair physical condition with subnormal mentality.....	33
Total number = 36.5% of 400.....	146
Class 3. (Incompetent.)	
Poor physical condition with poor mentality.....	41
Poor physical condition with subnormal mentality.....	53
Good physical condition and feeble-minded.....	13
Fair physical condition and feeble-minded.....	18
Poor physical condition and feeble-minded.....	36
Total number = 40.3% of 400.....	161

Note:—The facts that 149 cases (37.2%) are abnormal mental types and that 344 cases (86.0%) are infected with at least one venereal disease, are not expressed in this summary.

It is necessary to keep these women rather closely under observation because of their unwillingness to carry out conscientiously any line of treatment which may be prescribed. While this is an absolute necessity for the good of the women themselves and for the protection of the other inmates of the institution, it cannot help being an appreciable factor in the time consumed in treatment, which is a loss in the efficiency of the industrial work. It will also be seen how difficult it is, with 11.2% only being free from venereal disease, to find a sufficient number of women who are available for positions requiring "clean" women, such as those in dining rooms, kitchens, dairies, etc.

It is of interest that of the 45 women with negative reactions in both diseases, 13 were defective mentally, which leaves a still smaller number really available for the "clean positions," as such positions always entail some responsibility.

Chart VII is a summary of the four hundred cases according to their availability for work in the institution.

They have been divided into three classes:

*Class I* (Capable Women) includes 193 women (23.2% of the total number) who would be available for responsible positions throughout the institution which require also a fairly good physique. This represents the "pick" of the institution.

*Class II* (Mediocre Group) includes those women who are somewhat defective either mentally or physically and represent the rank and file of the institution—available for positions requiring an average amount of responsibility and strength. This class includes 146 women (36.5% of the four hundred).

*Class III* (The Incompetent) includes 161 women (40.3% of the whole number) who must practically be cared for by the institution.



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tution and can give to it very little help. Many of these cases are the segregable types and on account of their mental defect should never have been sentenced to a penal institution, but rather to feeble-minded schools or to defective delinquent institutions.

This classification does not include the 149 aberrational mental types (37.2%) which were mentioned in connection with Chart V. A large percentage of these women, on account of their instability, stand out as continual problems in the institution, and require continual ingenuity and resourcefulness on the part of the administration to find not only one but a series of occupations where they will not be too much a menace to their neighbors and can find sufficient and suitable outlet for their superfluous and unstable energy.

During the last four months there has been held at the Reformatory a daily clinic, which corresponds to the staff meeting in any psychopathic hospital. During the hour, one or two cases are discussed by the various members of the staff, who have been studying the woman from different points of view. The cases are brought up from two to four weeks after entering the institution, while they are still in the probationary section of the building. During this time the woman's own statement has been taken by a member of the sociological department, and the results of the investigation of the case have been obtained, both from letters sent to any one interested in the case and from the investigation of her home and haunts by the field worker. A complete physical examination has been made, including the laboratory tests for venereal disease. She has also been examined psychologically. The case is then read in full and discussed by the members of the staff—a summary of each case being made, as follows:

1. Physical condition, including general health, any special physical incapacity, nervous or otherwise, and the presence or absence of venereal disease.

2. Mental condition, including educational advantages and the results obtained, estimate of mental capacity aside from any educational training, any abnormal mental characteristics, and the standard of educational work for which she is prepared.

3. Habits—tea and coffee, cigarettes, alcohol, drugs and sex.

4. Court record—present offense and commitment, and previous court record.

5. Causative Factors—The important factors of the individual's life in chronological order, most of which are chosen because of their causation of her career.

- (a) Always includes facts of heredity or of ante-natal conditions.

- (b) Any innate mental or physical characteristics which may have been influential.

- (c) May deal with infancy and childhood, and so on, according to the individual case.

6. Capacities—The capacity of each person is noted, both

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industrially and domestically, in the grade of work done and the wages earned. This has usually been verified by their employers. Besides their fitness for and interests in various vocations, their avocations are studied and their capacity for amusement and entertainment learned. This will include fondness for reading and for hand work of any kind, such as embroidery, basketry, rug making, etc., or musical ability.

7. Recommendations—Having studied their capacities and needs, work is then chosen for them by the superintendent in the place in the institution which seems best fitted to their needs. It may be a position teaching industrial efficiency, perhaps one in domestic training, in outdoor work, or in a responsible position in which the personal relation between the matron and the woman is very close. A reference card catalogue is made with an individual card for each woman, on which is stated briefly her *physical* and *mental* condition, her *capacities*, and the *recommendations* in her case. These are also cross-catalogued under various headings, showing the different physical conditions; those needing out-of-door work; the different school grades; those with musical talent, etc. In this way the women available for different positions can be found with the least possible delay.

The founding of the clinic and the advance which has been made in the physical and mental studies of the women in the institution is due to the interest and support of the superintendent, Mrs. Hodder, who since coming into the institution has seen the possibilities of such a development and has steadily worked toward the establishment of such a laboratory. We feel that the daily clinic should mark a definite advance in study of this kind in co-ordinating the material collected and making the best use of it at the earliest possible moment.

### SUMMARY.

The following points stand out as a result of this study:

*I. Age*—The range in ages of the 400 women is from 17 to 81 years, the average age being 27.4 years. Over 70% are below 30 years of age.

*II. Mental*—The mental examinations of the 400 women have shown the following results:

88, or 22.0%, show good native ability.

59, or 14.7%, show fair native ability.

79, or 19.7%, show poor native ability or are dull from physical defect.

107, or 26.8%, show mental subnormality (slight mental defect).

67, or 16.8%, show feeble-mindedness (marked mental defect).

The abnormal types may be summarized as follows:

61, or 15.2%, give a history of epilepsy.

44, or 11.0%, show manifestations of hysteria.

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16, or 4.0%, have at some time been confined in hospitals for the insane.

31, or 7.7%, show marked neuropathic or psychopathic tendencies.

These abnormal mental cases represent 37.2% of the whole number. Besides the cases of epilepsy given above, 39 other women, or 9.7%, come from families where there were other cases of epilepsy.

*III. Educational*—As a class they have been found to have small educational advantages—7.4 years is the average number of years which has been spent in school, while the fifth grade was the average grade reached; 21% of the whole number, including those who had never been to school (4.5%), had not progressed beyond the primary grades, while 54.6% had not progressed beyond the sixth grade in the grammar school. Only 4.2% had received training beyond the grammar school.

In studying the results of the training received, it was found that 9.3% were illiterate, 64.2% needed instruction in the elementary principles of arithmetic, including long division, while only 26.5% were ready for advanced work. The encouraging part of this is, however, that over 81% of the last class (which includes the "Advanced" and "Reading Class II") have either good or fair mentality, showing their educable possibilities.

*IV. Physical*—21.5% of the total number show a good physical condition; 32.5% show a fair condition, while 46.0% show a poor condition; 86.0% are infected with venereal disease; 46.0% of the whole number have syphilis, while 81.5% have gonorrhea; 2.8% are doubtful cases, leaving only 11.2% who are entirely free from both diseases.

The influence of such factors as have been mentioned under the last three headings in the life of the individual will be readily seen. The advantage to the individual, the institution and the community, which would result from an early diagnosis and appropriate treatment, whether it be for educational, nervous or physical defects, will be appreciated.

CONCLUSION.

While the social life of the individual will always appear paramount in understanding her personality and her relation to society in the future as well as in the past, still the interpretation of her social life will never be complete until we have probed her mental processes as far as psychology will allow us, and have studied her physical capacities as thoroughly as the knowledge of medicine will permit.

No matter what the equipment may be in any institution for dealing with and reforming its inmates, the greatest efficiency in treatment, and the best results can never be attained until the most accurate diagnosis of the individual's potentialities is made. As

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in medicine, every new test which is of diagnostic value is welcomed, that the condition of the patient may be better understood before treatment is begun—so in criminalistics we should realize our present inadequate means to fully appreciate the individual's powers, and the causative factors of his career, and bend every energy to obtain, from a social, medical and mental standpoint, more specific knowledge of the individual. This should make the diagnosis, and consequently the prognosis, a far more reliable foundation on which to base all subsequent methods of treatment and reform.

## UNCONSTITUTIONAL CLAIMS OF MILITARY AUTHORITY.<sup>1</sup>

HENRY WINTHROP BALLANTINE.<sup>2</sup>

The United States remains externally at peace in the midst of a world war, yet within all is not peace. Industrial strife attended with violence and bloodshed has recently given rise to several occasions for the prolonged intervention of the military, notably in Colorado, Montana and West Virginia. The strike of the miners in Colorado, lasting over twelve months, has attracted the attention of the whole country by its bitterness and distressing tragedies. Idaho and Pennsylvania have seen similar troubles, and to a less degree, Ohio, Michigan, New Jersey and Massachusetts. Peace must, of course, be maintained at all hazards, but certain new and extraordinary claims of arbitrary military authority have been made and acted upon in several of these industrial conflicts, to which careful study and attention ought to be directed.

It is a widespread superstition among military men, and among many other well informed persons, that there is some mysterious and transcendent force in a declaration of martial law. The idea seems to be growing that it is the prerogative and function of the military to substitute itself for all civil authority, and that while it is in control the constitutions, courts and laws may be suspended and set aside.<sup>3</sup>

At the time of the great fire which followed the earthquake of April 18, 1906, at San Francisco, the federal troops were called out by General Funston. A proclamation was issued early on the first day of the fire, which announced that:

"The federal troops, the members of the police force, and all special police officers have been authorized to kill any and all persons found engaged in looting, or in the commission of any other crime."

Here we have the assumption of the power of life and death over the citizen.

Further illustrations of the assertion of arbitrary power by federal as well as state military authorities are not far to seek. Recently, in the Colorado strike General Chase, of the Colorado National Guard, claimed the right to arrest without warrant any one at any

<sup>1</sup>This article is based upon a paper read at the first annual meeting of the American Society of Military Law, a branch of the American Institute of Criminal Law and Criminology, Washington, D. C., October 19, 1914.

<sup>2</sup>Professor of Law, University of Wisconsin; Secretary American Society of Military Law.

<sup>3</sup>See the present writer, "Military Dictatorship in California and West Virginia," *1 California Law Review*, 413; also E. M. Cullen, "Decline of Personal Liberty in America," 48 *Am. Law Rev.* 345.

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place in the state during military occupation. Many men were so arrested and held in jail upwards of fifty days against whom no specific accusation of crime was or could be brought, on the vague plea of "military necessity." Private houses were searched for arms without any search warrant. Such highhanded measures naturally aroused the deepest resentment. (See John T. Fitch, *Law & Order in Colorado*, 23 *The Survey* 241 (Dec. 5, 1914). The newspapers report that an embargo was put on commerce in arms and the transportation of arms and ammunition by any of the railroads or express companies in the state of Colorado for any purposes except for the federal troops. By order of the commander of the federal forces it is said that all saloons in certain districts were closed and that fire arms were outlawed and ordered to be surrendered under penalty of confiscation. It is further reported that the state and later the federal officers in charge in Colorado refused to permit the opening of mines with the aid of strike breakers or non-union men, brought into the district by the coal companies.

One of the most extreme instances of the substitution of military force for law arose in West Virginia during the years 1912 and 1913. Industrial trouble of the gravest character had arisen between the coal miners and coal operators of Paint Creek and Cabin Creek, in Kanawha county, West Virginia. A strike was declared, and non-union labor was brought in to replace the strikers. The coal operators employed "guards" to protect their laborers and their property. The strikers were armed, and machine guns were installed by the operators. September 2, 1912, Governor Glasscock purported to proclaim martial law within a prescribed zone, and appointed a military commission of six officers of the national guard to try all offenders, except members of the national guard, and a court martial to try the latter. The first military commission so established is said to have tried and sentenced over one hundred citizens not engaged in the military service of the state, and military commissions later established tried and sentenced scores of other citizens not so engaged. The general orders for the guidance of the West Virginia military commission, in express terms, established it as a substitute for the civil courts. The Governor and military acted under the claim that all the provisions of the constitutions, both state and national, and all the laws and statutes of the state were suspended and for the time inoperative by reason of the existence of martial law. The proceedings which occurred stirred the lawyers of the Senate to an official inquiry. In the investigation conducted by a Senate Committee of Inquiry, Capt. Morgan, one of the

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members of the military commission, testified (in answer to a question put by Senator Borah) as follows:

Q. Now, then Capt. Morgan, if the military tribunal of which you were a member had seen fit to sentence a man to the penitentiary for life for perjury, you would have felt that you had the power to do it, would you not?

A. Yes, sir; as I viewed it at that time I considered it to be the law.

Colonel George S. Wallace, Judge Advocate General, testified:

"My theory of the whole situation was that the governor had a right to declare military law. If he declared military law, then the laws of war applied, and the laws of war would fix the punishment within the discretion of the military power."

Q. Then you assumed that the constitution and civil law were suspended?

A. I did; and the Supreme Court has sustained that assumption.

Q. You took the position all the way through this case you have referred to that there was no law within the military zone other than the will of the commander in chief?

A. Absolutely; and maintain that yet!

As Colonel Wallace said, the supreme court of appeals of West Virginia has sustained to a great extent the power of the governor to supersede the laws and constitution of the state by military orders and to establish his will as the supreme authority.<sup>4</sup> In these cases the West Virginia court, Ira E. Robinson, Justice, alone dissenting, refused to release, on *habeas corpus*, prisoners held in custody under commitment and sentence or awaiting trial by the military commission. As Justice Robinson put the question presented in the "Mother" Jones case: "May citizens accused of civil offenses be tried, sentenced and imprisoned or executed by military commissions at the will of the governor of the state, notwithstanding the civil courts having jurisdiction of the offense are open?"

In the recent case of *Hatfield v. Graham*<sup>5</sup>, the West Virginia court reiterated its doctrines. The court granted a writ of prohibition against the exercise of jurisdiction by the trial court in entertaining a suit for malicious trespass against the governor and certain officers of the militia who acted under the governor's orders and suppressed an issue of a newspaper known as the "Socialist Labor Star." The plant of this paper was at a point in the state remote from the martial law zone. It was charged that an issue of the paper was about to be

<sup>4</sup>*State ex rel. Mays v. Brown*, 71 W. Va. 527; 77 S. E. 243. *Ex parte Jones*, 71 W. Va. 609; 77 S. E. 1029.

<sup>5</sup>W. Va. 81 S. E. 533, March, 1914. Compare *Ulster Sq. Dealer v. Fowler*, 58 Misc. (N. Y.) 325; 111 N. Y. Supp. 16.

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circulated, antagonizing the governor and encouraging further disorder, and that some copies would be mailed into the district. It was held to be within the governor's power as commander-in-chief to suppress the entire issue, to prevent its getting into the mails.

"How about freedom of speech and of the press?" you may well ask. The court *concedes* that under ordinary conditions of peace the governor could not have lawfully exercised such apparently arbitrary power; but, it is said, a condition existed which amounted to *domestic war*, and called for the exercise of military power of the state to suppress it. The *necessity* for the act is its justification. As the governor had the *discretion* to determine whether the necessity therefor existed, the courts have no power to review his discretion or to pronounce his warrant or command unlawful as being in excess of his constitutional power; and if the governor is exempt this immunity protects his subordinates also. The governor has only to answer that he acts officially, and an action, though alleging that his act is malicious and wholly "without his political province," will be prohibited both as to him and to his subordinate military officers, whether they act under his written or oral command.

A reign of martial law somewhat similar in its claims to that in West Virginia was inaugurated in Montana the first of September, 1914, by proclamation of Gov. Stewart, as a result of industrial warfare and dynamiting by strikers in Butte. Here are parts of a supplementary proclamation by the commanding officer of the Montana National Guard that Silver Bow county be governed, until further orders, by military authority:

(5) All saloons and places where intoxicating liquors are sold at retail as a beverage will be closed at once and kept closed until further order. The stock of liquors of any person or persons violating this rule will be destroyed and all violations severely punished.

(6) Misdemeanors will be punished by the summary court. Maj. Jesse B. Roote is hereby appointed and constituted summary court of the military forces in said Silver Bow county. Violations of state and federal laws, other than misdemeanors, will be referred to a proper military commission for trial and punishment; civil causes will await the ordinary tribunals.

(7) No publication, either in newspaper, pamphlet, handbill or otherwise, in any way reflecting upon the United States, the state of Montana or their officers, civil or military, or tending to influence the public mind against them, will be tolerated.

(9) All assemblages in streets and highways are for-



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bidden. Assemblages in other places can only be held after the permission of the commanding officer is given.

(10) Children under 18 years of age will not be permitted on the streets after 7 o'clock p. m., nor before 6 o'clock a. m. Women are requested to not appear on the streets after 8 o'clock p. m., nor before 6 o'clock a. m.

(12) It is hoped that martial law in Silver Bow county will be mild and gentle; but it will be quickly and vigorously exercised when occasion requires.

Given this 1st day of September, 1914.

DAN J. DONOHUE, Major Commanding.

Official: JESSE B. ROOTE, Major and Adjutant.

Under this proclamation the militia suspended and took over the government of Butte and Silver Bow county and ordered the police court to desist from trying offenders. On September 4th the officer in command of the military force of the state issued orders to the mayor and city council of the city of Butte as follows:

"I hereby permit the full and free operation of all of the several departments of the city of Butte, except that the police court of said city will remain suspended until further orders from me."

On September 3d, Major Jesse B. Roote opened a summary military court, without other commission than military orders, and disposed of the regular police court business.<sup>6</sup> He announced from the bench his theory of the status of his court, somewhat as follows: "The rulings of this court," he said, "are without appeal or review by any power on earth. All powers of the prosecuting attorney and civil officers are suspended during military rule. The military authority may permit such civil officers as it sees fit to continue their duties. The civil courts have, by order of the commander of the militia, been permitted to perform their functions. The military tribunals may prescribe their own rules of procedure, and while the accused are not entitled to counsel they may have counsel here if they see fit. Military courts may prescribe their own punishments. This court will not be severe. It will not convict anyone except on satisfactory evidence. There will be no bitterness on its part, but the old maxim that 'tyranny is better than anarchy' applies. There is nothing in the law limiting the punishment that may be inflicted by the court."

Major Roote proceeded to exercise daily his functions of major, judge, jury, sheriff, lawgiver and prosecuting attorney. The case of a barber named Waidner furnishes an example of the wonderful effi-

<sup>6</sup>The attitude of the Montana Supreme Court and the puncturing of this inflated reign of martial law by its decision will be referred to later. See *Ex parte McDonald, In re Gillis*, 143 Pac. 947.

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ciency of military justice. On September 9th, Waidner was given sixty days in a military prison for insulting the uniform of the national guard, insulting the flag and the governor of the state and resisting the lawful authorities, *how? by refusing to shave a soldier because he was a militiaman!*

Application was made to the federal district court for writs of habeas corpus to release three or four men held as military prisoners. Judge Bourquin refused the application for the writs on the ground of lack of jurisdiction. In an opinion delivered from the bench, however, he is reported to have upheld in sweeping terms the claims that the power of the military is virtually absolute.<sup>1</sup> His theory it seems is substantially this: If the executive officers of a court are resisted in the exercise of its processes and decrees, the court is a closed court, even though its doors be open. Thereby the constitution and the statutes are overthrown; for there is no law where the courts are closed by reason of inability to execute process. While the governor is engaged in maintaining order there are no courts and no civil officers, until restored by the governor. He may restore them one by one, with more or less power, as he proceeds in suppressing the insurrection. His judgment is supreme therein. All statutes and constitutional guarantees are suspended by insurrection. There is no restraint upon the governor but his conscience, his honor and his humanity, except that he may possibly be impeached or held to account later if unreasonably and willfully severe and oppressive. The recitals of fact in his proclamations are conclusive. While the President or Governor cannot suspend the writ of habeas corpus, they can suspend the courts. Disturbers inciting to riot may be held in military custody even if the writ of habeas corpus is not suspended.

Under this military form of government Lieutenant Baker was appointed, on September 4th, military censor. His jurisdiction embraced the publication and distribution of any and all newspapers and handbills in Silver Bow county. Major Donohue gave a permit for services to be held in Catholic churches in honor of the election of Pope Benedict XV. It was also permitted to ring bells in the churches. The saloons were closed and stocks of liquor were confiscated by the soldiers for selling liquor contrary to military orders. Three men were sentenced to terms of years in the state penitentiary at Deer Lodge and conducted there by a squad of militia under sentence by the military commission for the offence of carrying guns after the institution of martial law.

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<sup>1</sup>I have had to rely on the files of the Anaconda Standard, a leading paper of Montana friendly to the mining interests, for the account of the occurrences in Butte.

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A prominent attorney who had dared to protest to Senator Walsh by telegraph against the military dictatorship and who had taken the lead in applying for writs of habeas corpus to the federal and state courts on behalf of some military prisoners, was sent for and brought before the military commander by the provost marshal. The gallant commander, having the attorney under his physical power, proceeded to insult and bullyrag him and to denounce his words and actions as contemptible. He was informed that the only reason he was not slapped in jail was because it might glorify him in the eyes of the people as a political martyr.

During the Ohio floods, a company of the Ohio National Guard established a picket line surrounding a portion of the flooded district of the city of Warren, Ohio, a district which had been abandoned by the citizens, leaving much property unprotected therein. The picket line was established for the purpose of preventing persons going into that district without a pass. One Smith attempted to pass through the picket line to take some pictures, in defiance of the orders of the soldiery. He was arrested by the military. On petition for a habeas corpus the court of common pleas declared that the commanding officer of the militia may make reasonable regulations for the protection of life and property, and the troops may arrest or eject persons attempting to cross guarded lines.

It is reported by Col. H. J. Turney of Cleveland, Ohio, who was on duty as Judge Advocate at Dayton, that the militia established a military commission, and tried thieves, looters and other criminals, at the time of the Dayton floods. About 117 cases were disposed of, and some of those tried were sentenced to work on the streets under military guard.

Coming now to a discussion of the law applicable to these situations, it may help to focus attention on the fundamental issues involved, to formulate some of the principal questions of law that have arisen by reason of the broad claims of military authority recently asserted and acted on in these cases.

I. What is the effect of a proclamation of martial law, and does it suspend the constitution, and the laws of the state and of the United States?

II. Does the governor of a state, by such proclamation, confer on himself, or on his military representatives, a supreme and unlimited power over all his fellow-citizens, within the space described, which suspends the functions of civil courts and magistrates and substitutes

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<sup>1</sup>In *re Smith*, Cuyahoga Com. Pleas, June, 1913; 23 Ohio Dec. 667.

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in their place the mere will of the military commander?

III. May the military disregard the writ of habeas corpus, or other process of the courts, if issued? Is the writ of habeas corpus in practical effect suspended by such proclamation?

IV. May a military commission, or summary courts, be established as a substitute for the ordinary civil courts, to try civilians for (a) felony, (b) misdemeanors, or (c) disobedience of orders and proclamations?

V. If so, is there any limit to the punishments which may be prescribed and inflicted? May the military confiscate property and levy fines, as well as imprison and put to death at their discretion?

VI. If they take life, or injure person or property, are the military authorities immune from civil suit or criminal prosecution for unreasonable acts done in excess of authority? Are the ordinary courts without jurisdiction to inquire into and review the legality of military measures?

VII. May the military shoot persons caught looting, or in the commission of other crimes?

VIII. May the military arrest without warrant, merely on suspicion of complicity in the rioting, or other disturbances? May they forcibly enter and search private houses and seize property without a search warrant?

IX. May the military hold and detain prisoners so arrested on suspicion, for indefinite periods at their discretion, without charge of crime and without turning them over to the civil courts for trial?

X. May the military issue executive orders and proclamations to the citizens generally, having the force of law?

(a) May the military close saloons and confiscate the stock of liquors of those who sell contrary to military orders?

(b) May the military exercise a censorship over the press and suppress newspapers at their discretion?

(c) May the military limit the right or privilege of peaceable public assembly?

(d) May the military prescribe to employers what classes of laborers they shall or shall not employ?

(e) May the military establish "dead lines" within which it is forbidden to civilians to go without a military pass, and so restrict the freedom of movement of peaceable citizens?

(f) May the military confiscate arms, or forbid traffic in arms?

(g) Will a sentry be justified in firing on a person disobey-

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ing his orders to halt, where such person is not attempting to carry out any felonious design?<sup>9</sup>

The affirmative of these questions represents the "Bill of Military Rights" which the supporters of martial law would write across the face of the Bills of Civil Rights of our constitutions.<sup>10</sup>

Fred  
Smith

The extent of military authority can, however, only be ascertained when we have found the source from which it springs. Show us, we will first ask the supporters of military dictatorship, show us the power to declare this martial law. Can you find it expressed in any provision of the national or state constitutions? If it is not expressed therein but is only to be implied from some of their provisions, show us from which ones. The Federal Constitution makes no mention of martial law. A careful examination of this Constitution makes it clear that no such power was conferred or intended to be conferred, upon any department of the Government, either directly or by necessary implication.<sup>11</sup>

As was pointed out in the famous case of *Johnson v. Duncan*,<sup>12</sup> when General Jackson attempted to declare martial law in New Orleans during the War of 1812, the Constitution of the United States does not provide that in time of public danger the executive power shall reign supreme. It does not trust into the hands of a dictator the reins of government. The framers of the Constitution were too well aware of the hazards of such a provision, and had they made it, the states would have rejected a constitution with such a clause.

Edo

We are more particularly concerned with the exercise of martial law by the states. The power to declare martial law is expressly recognized only in four states, viz.: by the constitutions of Massachusetts, New Hampshire, Rhode Island, and South Carolina, and by three of these it is confined to the legislature. These provisions are contained in their Bills of Rights. By the Massachusetts Declaration of Rights<sup>13</sup> "No person can, in any case, be subject to law-martial, or to any penalties or pains by virtue of that law, except those employed in the

<sup>9</sup>*Com. v. Shortall*, 206 Pa. St. 165; 65 L. R. A. 193; see the present writer, "Martial Law," *XII Columbia Law Rev.* 530.

<sup>10</sup>W. E. Burkholder, *Military Govt. and Martial Law*, 2nd ed., 1904, Chaps. 24 and 25; Winthrop, *Military Law*, 2nd ed., pp. 1274-1278. *State v. Brown*, 71 W. Va. 519; 77 S. E. 243, and notes thereto in 45 L. R. A. (N. S.) 996, and Ann. Cas. 1914 C., p. 1. *Ex parte Jones*, 71 W. Va. 567; 77 S. E. 1029; 45 L. R. A. (N. S.) 1030; *Ex Parte Field*, 9 Fed. Cas. 1; *Hatfield v. Graham*, 81 S. E. 533 (W. Va.). *Re Boyle*, 6 Idaho 609; 45 L. R. A. 832. *Re Moyer*, 35 Colo. 159; 85 Pac. 190. *Com. v. Shortall*, *supra*.

<sup>11</sup>See G. B. Davis, *Military Law*, p. 305.

<sup>12</sup>3 Mart. O. S. (La.) 530; 6 Am. Dec. 675.

<sup>13</sup>Part I, Article 28. I am indebted to Dr. Blaine F. Moore for assistance in examining the various state constitutions.

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army or navy, and except the militia in active service, but by authority of the legislature." The provisions of New Hampshire and South Carolina are the same.<sup>14</sup> By the Rhode Island Declaration of Rights<sup>15</sup> "the military shall be held in strict subordination to the civil authorities. And the law-martial shall be used and exercised, in such cases only, as occasion shall necessarily require."

It is to be observed that these provisions of the respective Bills of Rights of these four states are intended as limitations and not as grants of power. What is the proper construction of the term "law-martial" as there employed, it is impossible to say. It is further to be remembered that every article in the Declaration of Rights, as well as the constitution of a state, is subject to the paramount control of the Constitution of the United States, which annuls and destroys every thing irreconcilable with it.<sup>16</sup> The power of the legislature of a state to declare martial law, in the strict sense, is doubtless forbidden by the Fourteenth Amendment to the Federal Constitution, requiring due process of law. Martial law in the sense of the unrestricted power of military officers, or others, to dispose of the persons, liberties or property of the citizen, is in Tennessee, declared inconsistent with the principles of a free government, and is not confided to any department of the state government.<sup>17</sup> The constitutions of at least twenty states declare that laws can be suspended only by the legislature. By express declaration in several states no civilian can be subjected to martial law or to punishment thereby.<sup>18</sup>

~~The only express grant of power to the executive to declare martial law is contained in the constitution of the Territory of Hawaii.~~ *Hawaii*  
This is derived from Article 31 of the Constitution of the Republic of Hawaii, which provided that the president might, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the writ of habeas corpus, or place the whole or any part of the republic under martial law. Under this provision, it was held that the executive alone has discretion to decide whether the exigency is such as to require martial law, how long it is to continue in force, and that the measures taken by the military authorities, such as trial by a military commission, could not be inquired into or reviewed by the courts.<sup>19</sup> The trial of a citizen for trea-

<sup>14</sup>N. H., Part I, Article 34; S. C., Article I, Section 27.

<sup>15</sup>Article I, Section 18.

<sup>16</sup>*Jones v. Crittenden* (N. C.), 6 Am. Dec. 531.

<sup>17</sup>Tenn., I, 25.

<sup>18</sup>Md., Me., Vt., W. Va., Tenn. See also Stimson, Fed. and State Const., sec. 126, 293.

<sup>19</sup>*In Re Kalaniana'ole* (1895), 10 Hawaii Rep. 29.

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son by a military court was accordingly sustained, although the civil courts were in session. If such a discretionary power is derived from the constitution, it seems that it is ipso facto withdrawn from legislative or judicial regulation, as no department has the right to interfere with powers conferred upon another which carry or imply any discretion.<sup>20</sup>

*is an incident*

The governor may, by the constitutions of most states call out the militia to execute the laws, suppress insurrection and repel invasion.<sup>21</sup> In the absence of a direct grant of power, the governor's authority to inaugurate or proclaim martial law finds a constitutional sanction, according to the ingenious court of West Virginia, as implied in or incidental to this power in the exercise of which it is claimed he has absolute political discretion as to the means to be employed to make it effective.

There is indeed no objection to allowing the governor entire discretion as to the occasion for calling out the troops or as to the necessity for keeping them on duty. But the use of the military is another matter, and military officers do not have unlimited discretion as to the means and measures which may be employed to restore the peace. These are defined by law as is the exercise of force in private self-defence. It is necessary to distinguish between the use of military power in aid of the civil authorities, and martial law in the technical sense. In the one case, the law governs; in the other, military force. In the one, military power is the servant of the law; in the other, it is the master.<sup>22</sup> Does the provision for a militia and for its use in keeping the peace and executing the law annihilate, by mere implication and presumption, other express provisions of the constitution?

The military is, in all states, except New York, declared forever subordinate to the civil power.<sup>23</sup> As it is put in the Massachusetts Declaration of Rights, Article 17, "And the military power shall always be held in exact subordination to the civil power, and be governed by it." The courts have had some difficulty with the proper construction of this provision. It has been supposed by some that this means that the military can only act under the order of the civil peace officers, and in aid of sheriffs and other magistrates.<sup>24</sup> But it would seem that this provision could not have been intended merely to restrict

<sup>20</sup>See *State v. Dickerson*, 33 Nev. 113; 113 Pac. 1051. *Barcelon v. Baker*, 5 Philippine Rep. 87.

<sup>21</sup>Stimson, Federal and State Constitutions, p. 347.

<sup>22</sup>See the argument of David Dudley Field in behalf of William McCordle in Sup. Ct. U. S. 1868; Veeder's Legal Masterpieces, p. 969.

<sup>23</sup>Stimson, Federal and State Constitutions, p. 245, sec. 292.

<sup>24</sup>*Ela v. Smith*, 5 Gray (Mass.) 121 (1855); *State v. Coit*, 8 Ohio Dec. 62 (1897).

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the military to acting under the orders of some civil peace officer, such as a mayor or sheriff. In a Colorado case,<sup>25</sup> it was held that the governor, acting through the militia, might seize and detain suspects without turning them over to the civil courts, until the insurrection was suppressed. It was said that this did not violate the constitutional provision that the militia shall always be in strict subordination to the civil power, since the governor acts in his civil capacity when commander-in-chief of the state militia. Thus the clause was allowed to have no restraining effect. But as Justice Steele points out in his able dissenting opinion, does this provision have no meaning except that the military shall always be under the command of the governor? That is simply annulling this section of the Bill of Rights. The provision must have some meaning. It can have no meaning if constructed as it is by the majority of the Colorado court in the Moyer case. Such a method of construction cannot but be regarded as disingenuous. It is a form of juggling which makes of our constitutions "mere scraps of paper."

The "military authorities" of a state can only be the governor and his military representatives in command of its armed forces. The "civil authorities" include not only the sheriff, police and ordinary peace officers but also the courts of law to which they are subordinate. By civil power or authority in general must be understood the ordinary law, as declared by the courts of law. This provision is a declaration of the supremacy of law as against arbitrary, executive discretion.<sup>26</sup> Martial law, which destroys the constitutional guaranties and supersedes the law and the courts, renders the "military independent of and superior to the civil power," the attempt to do which by the king of Great Britain was deemed by our fathers such an offense that they assigned it to the world as one of the causes which impelled them to declare their independence.<sup>27</sup> The whole history of English constitutional development shows a dramatic and a successful struggle for the complete subordination of executive power to law. Yet, in the Colorado, West Virginia and Idaho cases this clause as to the subordination of the military power, has had no restraining effect, and has either been misinterpreted, discarded, or ignored. The military has been made largely independent of the courts and the courts have been content to abdicate the supremacy of law and civil authority.

<sup>25</sup>*In re Moyer*, 35 Colo. 159; 85 Pac. 190; 12 L. R. A. (N. S.) 979.

<sup>26</sup>"Soldiers and citizens alike stand under the law. Both must obey its commands and be responsible to its courts." *Fluke v. Canton*, 31 Okla. 718; 123 Pac. 1049 (1912); *Franks v. Smith*, 142 Ky. 323; 134 S. W. 484; Ann. Cas. 1912 D 319; *Christian County v. Merrigan*, 191 Ill. 484; 61 N. E. 479.

<sup>27</sup>*Ex parte Milligan*, 4 Wall. (U. S.) 2.



The argument for the implied power of the governor to proclaim martial law, create a military commission, try and sentence civilians, and award such punishment as he may deem fit and proper was further rested by the West Virginia court on still another ground: That this power is a power of self-preservation, which is a necessary incident or attribute of sovereignty and belongs in England to the crown. The necessity for exercising this power, which must be lodged somewhere, is determinable by the governor of the state and his decision is not reviewable in any manner by the courts. In order to test this prerogative theory it is necessary to consider the situation under the English constitution and the common law system from which it purports to be derived.

Considerable controversy exists between English writers on constitutional and military law, as to whether any power to proclaim martial law really exists as a prerogative of the Crown, or whether the use of military force does not depend on the common law privilege and duty of all, ruler and citizen alike, to use any force necessary to overcome violence and suppress disorder. In the Case of Ship Money<sup>28</sup> "the opinion of a majority of the judges was in favor of allowing the crown a power to proclaim martial law, whenever the country was in danger; and of the existence of that danger they held that the crown was the sole judge. . . . It was clear, however, from the Petition of Right (1627, 3 Car. 1) that the actual decision in the Case of Ship Money was wrong. . . . It is the views of the lawyers who framed the Petition of Right, and argued the case of Ship Money for Hampden, which have prevailed."<sup>29</sup>

Finlason, an English lawyer who has written several works on this subject, supports the military view that the crown once had a prerogative to govern ordinary citizens by martial law in case of rebellion which amounted to a war, and that this prerogative still remains.<sup>30</sup> This power can, of course, be exercised, even according to these writers, only if a state of war as defined by law really exists. Their contention only goes to this extent, that the Petition of Right is simply aimed at martial law in time of peace, and that rebellion, when the courts are closed, is a state of public war within the realm. Thus a proclamation of martial law in England would be a declaration of a state of

<sup>28</sup>3 State Trial, 826 (1637).

<sup>29</sup>Holdsworth, *Martial Law Historically Considered*, 18 *Law Quarterly Review*, 124, 131; G. G. Phillimore, *Journal Soc. Comp. Leg.* (1900), Vol. 2 N. S., p. 51.

<sup>30</sup>Finlason, *Treatise on Martial Law; Commentaries on Martial Law; Review of Authorities as to Repression of Riots and Rebellion*. See also Forsyth, *Cases and Opinions on Constitutional Law*, pp. 198, 199, 553, 556, 557.

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war. This theory seems to have been adopted by a case which arose during the Boer war in South Africa, that when a state of rebellion amounting to war exists, the courts have no authority or jurisdiction to call in question the measures of the military authority.<sup>81</sup> This case, however, rejected the ancient test of Coke, Rolle and Hale<sup>82</sup> that when the courts are open it is time of peace, and treated the determination or proclamation of the military as conclusive as to when a state of war will be deemed to exist. The denial of the jurisdiction of the courts by this case has, however, been severely criticised.<sup>83</sup>

The better opinion would seem to be that the power to proclaim martial law is not a part of the English constitution or common law.<sup>84</sup>

Professor Dicey contends that martial law does not apply in England even to rebels. He cites Wolf Tone's case as illustrating the noble energy with which the judges have maintained the rule of regular law, even at periods of revolutionary violence. Every proclamation of martial law, either in the United Kingdom or the colonies, has been followed by an Act of Indemnity. These acts are always so framed as to protect only such measures and proceedings as have been done bona fide and of necessity to meet the emergency.<sup>85</sup> This is evidently on the ground that the existence of any such prerogative is either denied or doubted, and that it is necessary to protect persons who have acted bona fide in time of war or insurrection by a special retroactive statute.

It would seem evident that to uphold the declaration of martial law as a war measure, as certain English writers do, excludes the power from the states. It is, accordingly, necessary for the West Virginia court to go to the extreme of claiming an alleged war power in the various states; and the court holds that the governor of a state may, like the king of England, declare martial law during a time of insurrection by virtue of the sovereign war power of the state. The West Virginia court thus puts its theory: "The declaration of a state of war was, in law and in fact, a recognition or establishment of a state of belligerency, and made the inhabitants of the military district tech-

*war power*

<sup>81</sup>*Ex parte Marais* (1902), A. C. 109.

<sup>82</sup>1 Hale, P. C. 344; Hist. Common Law, p. 42, 43; Rushworth Historical Collections, Vol. II, Appendix, pp. 79, 81.

<sup>83</sup>*Edinburgh Review*, Jan., 1902, Vol. 195, p. 79; see also Dicey, Law of Constitution, 7th ed., pp. 283, 288, 545; Sir. F. Pollock, 18 *Law Quar. Rev.* 152; The *Case of Marais*, 18 L. Q. R. 143, 148; XII *Columbia Law Rev.* at p. 536.

<sup>84</sup>Wolfe Tone's case (1798) 27 State Trials 614. See Phillimore, *Journ. Soc. Comp. Legis.*, Vol. 2, N. S., p. 51; *Grant v. Gould* (1792). 2 Hen. Blackstone 69, 98. Certainly it has never been recognized or established clearly. See *Blackburn, J., R. v. Eyre* (1868), Finlason's Report at p. 74; *R. v. Nelson & Brand* (1867), Frederick Cockburn's Report, 59.

<sup>85</sup>195 *Edinburgh Review*, p. 90.

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nically enemies of the state."<sup>36</sup> But the learned court fails to observe the distinction between the kind of military authority which may be exercised by the federal government over enemy territory in war and that exercised by a state in putting down riot within its own borders. Insurrection and war are not convertible terms, and calling mob violence and persistent rioting by the name "rebellion" does not reduce the legal status of citizens to that of public enemies.<sup>37</sup>

In the case of military occupation of enemy territory the president and his officers have an absolutely free hand. As it is clearly explained by Mr. Cushing, in an opinion which he gave when attorney-general,<sup>38</sup> "This is incidental to the state of solemn war, and appertains to the law of nations. The commander of an invading, occupying or conquering army rules the invaded country with supreme power, limited only by an international law and the orders of the sovereign or government he serves or represents. . . . This does not enlighten us as to martial law in one's own country, and as administered by its own military commanders. This is a case which the law of nations does not reach."

Accordingly, the oft-quoted doctrine that martial law may prevail when the courts are closed and not able to administer justice, as this is a state of war, does not apply to the states even if it be sound as to the United States. It cannot therefore be claimed that the governor has power to establish a military commission as incident to his power to declare a state of war. The language of Taney, C. J. in *Luther v. Borden*, that the supreme court could not question the authority of the state legislature to declare martial law during Dorr's Rebellion, as it was a state of war in which the state might resort to the rights and usages of war, is very unfortunate and misleading.<sup>39</sup>

That was an action of *trespass q. c. f.* brought against Borden and others in the Federal Circuit Court for breaking and entering the house of Luther. The justification set up by the defendants was that the plaintiff was aiding and abetting an insurrection, and had been under arms in the carrying out of his traitorous designs. The defendants justified not under any civil precept or warrant, but under military orders to arrest the plaintiff, and if necessary to break and enter his dwelling house and search the rooms where he was supposed to be concealed. It was claimed that such orders were authorized by an Act

<sup>36</sup>*State v. Brown, supra.*

<sup>37</sup>See *Alleghany Co. v. Gibson*, 90 Pa. St. 397, 417; the Prize Cases, 2 Black (U. S.) 635, 673.

<sup>38</sup>VIII, Opinions of Atty. General, at p. 369.

<sup>39</sup>7 How. (U. S.) 1, 12 L. ed. 58; this is properly criticized and the true doctrine stated in 2 Willoughby on the Constitution, p. 1238.

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of the General Assembly of the state of Rhode Island, June 24, 1842, declaring martial law. One of the main questions of the case was whether this statute purporting to establish martial law over the whole state could be deemed constitutional.

Taney, C. J., holds that while it was not necessary to inquire to what extent nor under what circumstances the power to declare martial law may be exercised by a state, that a military officer might lawfully arrest without a warrant anyone whom he had reasonable grounds to believe was engaged in the insurrection. He might order a house to be forcibly entered and searched for the purpose, using only sufficient force to accomplish the object, and being answerable for unnecessary or wilful violence. The Chief Justice said that the state must determine what degree of force the crisis demands, and that he saw no ground at that time upon which the Supreme Court could question the authority of the legislature to declare martial law. The Royal Charter of 1663 was the only constitution which Rhode Island had until 1842.

Mr. Justice Woodberry dissented as to the constitutionality of this statute in one of the most searching and able discussions of martial law to be found anywhere in the books. He clearly demonstrated among other things that the Act of the Legislature of Rhode Island could not be upheld as a war measure.<sup>41</sup>

As was pointed out by Justice Woodbury, domestic violence is to be regarded, not as a state of war giving belligerent rights, but as conferring only the powers of peace on the state. These are to be exercised through its civil authorities, aided by its militia, until the general Government interferes and recognizes the contest as a war. The Constitution expressly provides that "The Congress shall have power to declare war" <sup>42</sup> (Art. I, Sec. 8). To remove all doubt on the exclusiveness of the war power in Congress in all cases, domestic or foreign, there is a prohibition on the states<sup>43</sup> that "No state shall, without the consent of Congress, engage in war unless actually invaded, or in such imminent danger as will not admit of delay." This manifestly refers to danger from a foreign enemy threatening invasion, which is always used as contrasted with domestic insurrection.<sup>44</sup> A

no state  
war power

<sup>41</sup>*Despan v. Olney*, 7 Fed. Cas. No. 3822, p. 534, another Dorr case, though decided in 1852, which cites *Luther v. Borden* as holding that the legislature of a state may declare martial law, is open to the same observations, as also to the criticism that in neither of these cases was there any necessity of going much further than to uphold a legislative extension of ordinary common law rights of arrest without warrant.

<sup>42</sup>Art. I, Sec. 8.

<sup>43</sup>Art. I, Sec. 10.

<sup>44</sup>*Luther v. Borden*, 7 How. (U. S.) pp. 71-73.

state of the Union, therefore, has no constitutional power to go to war, either with itself or with other states, or to give to its citizens the status of public enemies with no rights which the military are bound to respect. The maxim, *Inter arma silent leges*, does not apply in a state, and authorities as to military government which may be exercised by an invading general over the inhabitants of enemy territory during a public war (such as that exercised in the South in the War of the Rebellion) do not apply. Martial law exercised by a state or by the United States on the request of the state, in putting down domestic riot and disorder among its own citizens must be supported if at all on some basis entirely different from military government, which can only be exercised in time of war and by the United States.<sup>45</sup>

It has been supposed by some that the power to declare martial law is connected with the power to suspend the writ of habeas corpus. By the constitutions of most states this writ can only be suspended when, in cases of invasion or rebellion, the public safety requires it. By the constitutions of several states the writ can never be suspended in any case. The constitutions of several states provide that the writ can only be suspended by the legislature, and in other states this is implied by the due process of law clause.<sup>46</sup> "It has been the settled law of this country ever since 1807 that the suspension of the writ of habeas corpus is a legislative and not an executive function. . . . If, therefore, the power to suspend that writ must stand or fall with the power to establish absolute martial law, the inference is inevitable that no such regime can be established by the executive."<sup>47</sup>

It has been suggested that the practical object of suspending the writ of habeas corpus is to permit and authorize the arbitrary arrest and imprisonment of persons against whom no legal crime can be proved. As was said by Judge Deady, in the case of *McCall v. McDowell et al.*:<sup>48</sup> "Plainly expressed, the suspension of the privilege of the writ is an express permission and direction from Congress to the executive to arrest and imprison all persons for the time being whom he has reason to believe or suspect of intention or conduct in relation to the rebellion or invasion which may be injurious to the common weal. \* \* \* If the suspension of the privilege of the writ is not intended to authorize and permit arrests without ordinary cause or warrant, for what is it intended?"

<sup>45</sup>See Col. H. C. Carbaugh, *Martial Law*, 7 *Ill. Law Review*, 479, 495; *Winter v. Dickerman*, 42 Ala. 92 (1868), a case relating to military occupation during the Civil War.

<sup>46</sup>Stimson, *Fed. and State Const.*, p. 127.

<sup>47</sup>*Ex parte McDonald*, 143 Pac. 947, 951 (Mont. 1914).

<sup>48</sup>1 Abb. (U. S.) 212; 15 Fed. Cas., p. 1235, Case No. 8673.

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This idea is, however, repudiated by Mr. Justice Davis, in the great case of *Ex parte Milligan*.<sup>49</sup> "The suspension of the writ does not authorize the arrest of any one, but simply denies to the arrested the privilege of the writ in order to obtain his liberty." It merely enables the government to detain a prisoner arrested for good cause for an indefinite time, without trial or bail. It does not legalize seizures otherwise arbitrary. No charter for undefined and unlimited authority even in the legislature can be found here. All other remedies for illegal arrest remain and may be pursued against the parties making or continuing them. The suspension of habeas corpus is therefore wholly unlike and falls far short of martial law.<sup>50</sup>

It has been held, however, by the Supreme Court of Colorado, in the *Moyer* case,<sup>51</sup> that, entirely independent of the authority of the governor to declare martial law, or to suspend the writ of habeas corpus, any person may be arrested by the military authorities on suspicion of participating in, or aiding and abetting an insurrection, and the legality of the arrest and detention cannot be inquired into or reviewed by the courts. It is argued that if offenders or suspects must be handed over to the civil courts they might be released on bail, and left free to rejoin the rioters. Further, the military might be subjected to actions of replevin by those whom they had deprived of their arms, and might be required to return them to those who would thus be equipped to continue their lawless conduct. It is further held that the courts cannot review the facts upon which the governor acted, in arresting suspects, as this would be a direct interference with his authority. The court argues that, since the military may resort to the extreme measure of taking life in order to suppress insurrection, the milder means of seizing and imprisoning the persons participating in riot must *a fortiori* be justifiable.

Does the Colorado court then mean to contend that the military may execute and put to death any person merely on suspicion? As Justice Steele points out in his able dissenting opinion, the power to resist or arrest rioters engaged in the open disturbance of the peace is a very different matter from a power to arrest any one whom the governor or the military accuse or suspect of possible future participation in such disturbances. It is a matter for amazement that courts should acquiesce in the claim that any citizen may be arrested at the mere

<sup>49</sup>4 Wall. 2, 115.

<sup>50</sup>*Luther v. Borden* 7 How. 1, 60; *Griffin v. Wilcox*, 21 Ind. 370; Pomeroy, Constitutional Law, Sec. 708-714; 2 Willoughby on the Constitution, Ch. 62, p. 1247; Cooley, Principles of Constitutional Law, p. 289; G. B. Davis, Military Law, p. 332.

<sup>51</sup>*In re Moyer*, 35 Colo. 159; 12 L. R. A. (N. S.) 979; 117 Am. St. Rep. 189.

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pleasure of these military policemen, and confined in a prison cell incommunicado for many months, at their discretion without remedy.<sup>52</sup> If they are to hold prisoners until order is restored, what assurance or limit is there on the length of time a man may be held? Yet the Colorado court decides that persons so arrested by the military on suspicion only may be restrained of their liberty, without warrant or charge, until such time as the governor declares the insurrection to be at an end and order to be restored.

The Supreme Court of the United States has unfortunately lent apparent countenance to this pernicious doctrine. Chas. W. Moyer sued former Governor Peabody of Colorado for false imprisonment without due process of law at the hands of the militia acting under the Governor's orders. He was not arrested as a rioter taken in the act, but merely on suspicion, and was detained, it was alleged, for over two months without probable cause and without any attempt to bring him before the courts or prefer a charge of crime. The Federal Court sustained a demurrer to the complaint, and the Supreme Court affirmed the decision on the ground that the allegations did not show that he had been deprived of his liberty without due process of law.<sup>53</sup>

Justice Holmes says in his opinion: "So long as such arrests are made in good faith or the honest belief that they are needed to head insurrection off, the governor is the final judge; and he cannot be subjected to an action after he is out of office on the ground that he had no reasonable ground for his belief." The Supreme Court thus holds that as far as the 14th amendment is concerned, a wanton abuse of power must be alleged, and that the discretion of the commander is limited only by good faith. He cannot be compelled to show reasonable and probable ground for believing in the necessity of the detention. This doctrine is at least consistent with the nominal supremacy of the law and civil courts, although the language used does not seem as carefully weighed as one would expect from the learned Justice or the Court.<sup>54</sup> It is of course not necessary that the state should go to the full extent of its constitutional power in delegating military authority.

As Blackstone says, "The glory of the English law consists in clearly defining the times, the causes, and the extent, when, wherefore and to what degree, the imprisonment of the subject may be lawful. This it is which induces the absolute necessity of expressing upon

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<sup>52</sup>See *Skeen v. Monkheimer*, 21 Ind. 1; *Jones v. Seward*, 40 Barb. (N. Y.) 1563 (1863); *Ex parte Moore*, 64 N. C. 802, 807.

<sup>53</sup>*Moyer v. Peabody*, 148 Fed. 870; affirmed 212 U. S. 78; 53 L. Ed. 410.

<sup>54</sup>II Willoughby, Const. Law, p. 1241.

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every commitment the reason for which it is made, that the court upon a habeas corpus may examine into its validity, and according to the circumstances of the case, may discharge, admit to bail or remand the prisoner." (Bbl. Com. III, p. \*129, 133; I p. \*135). If the grounds of the imprisonment of persons arrested without warrant cannot be inquired into by the courts, and if the governor is the sole judge of the necessity to imprison and detain suspects, then the writ of habeas corpus is certainly evaded, if not suspended, for all practical purposes.<sup>55</sup> When an insurrection is prolonged, as in Colorado, such a doctrine may result in the indefinite detention of military prisoners. This is a form of punishment and the summary trial and punishment of offenders by military commission might be preferable to such detention. The Montana court, while it professes to follow this Colorado doctrine shows a disposition to limit it, and to inquire, from time to time, into the necessity of the detention.<sup>47</sup> It would seem that military prisoners should be turned over to the civil authorities for trial, as soon as that could be safely done, to-wit, when danger of rescue is over; and that the courts should at least inquire into the facts as to the good faith and the necessity of military detention and why prisoners have not been delivered to the civil authorities.

If not martial law, then what? it may be asked. One who supposes that the ordinary law is helpless in the face of violence, disorder, and public danger shows himself very ignorant of the authority and resources which the law affords. Before we throw constitutional liberty overboard, even for a day, let it be clearly proved that the resources of the common and statutory law are inadequate. It will be found that the government has within the constitution all the powers which are necessary to preserve its existence and that of society. The strong arm of the Federal Government is behind the state governments by express constitutional mandate to insure them a republican form of government, and to protect them from domestic violence too strong to be overcome by local authority. This is not a war power, but a peace power.

The orthodox common law doctrine as to the source and scope of the powers of the military may be termed that of public self defense

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<sup>55</sup>See *In re Boyle*, 6 Idaho 609; 45 L. R. A. 832, note. Cf. *Johnson v. Jones*, 44 Ill. 156; 92 Am. Dec. 159. The suspension of the privilege of the writ does not go far. That enables persons to be arrested on suspicion and detained without bail or speedy trial by paralyzing one remedy. This Colorado doctrine kills the right itself, by authorizing arbitrary imprisonment and by substituting executive order and the vague plea of "military necessity" for grounds and causes defined by law.



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or police power.<sup>56</sup> According to this doctrine the military is merely an extension of the police force of the state for the restoration of public order. Thus the intervention of the military does not introduce martial law.

As was said by Tindall, C. J., in charging a grand jury on the occasion of the Bristol riots,<sup>57</sup> "The law of England hath, in proportion to the danger which it attaches to riotous and disorderly meetings, made ample provision for preventing such offenses, and for the prompt and effectual suppression of them whenever they arise."

Lord Mansfield, the great expounder of the common law, in an impressive speech on the employment of the military to quell the Gordon riots of 1780, denied before Parliament that this proceeded from any extraordinary exertion of the royal prerogative, or that it could only be justified by proclamation of martial law. "Every individual, he said, "in his private capacity, may lawfully interfere to suppress a riot, much more to prevent acts of felony, treason, and rebellion. \* \* \* What any individual may lawfully do for the prevention of crime and the preservation of the public peace may be done by any number assembled to perform their duties as good citizens. It is the peculiar business of all constables to apprehend rioters, to endeavor to disperse all unlawful assemblies, and, in case of resistance, to attack, to wound, nay, kill, those who continue to resist;—taking care not to commit unnecessary violence or to abuse the power legally vested in them. \* \* \* The persons who assisted in the suppression of these tumults are to be considered as mere private individuals acting as duty required. My lords, we have not been living under martial law, but under that law which it has long been my sacred function to administer. \* \* \* Supposing a soldier, or any other military person who acted in the course of the late riots, had exceeded the powers with which he was invested, I have not a single doubt that he may be punished, not by court-martial but upon an indictment."

"Consequently the idea is false that we are living under a military government, or that, since the commencement of the riots, any part of the laws or of the constitution has been suspended or dispensed with. \* \* \* The military have been called in, not as soldiers, but as citi-

<sup>56</sup>*Franks v. Smith*, 142 Ky. 232; 134 S. W. 484; Ann. Cas. 1912 D, p. 319; *Fluke v. Canton*, 31 Okla. 718; 123 Pac. Rep. 1054. See also authorities collected in dissenting opinions by Robinson, J., *State v. Brown*, 77 S. E. 255, 256; *Ex parte Jones*, 77 S. E. Rep. 1053. See also Stephen, *History of the Criminal Law*, Vol. 1, p. 214; W. H. Moore, *Act of State in English Law*, p. 48; Dicey, *Law of the Const.*, 7th ed., 538; 2 Hare, *Am. Const. Law*, p. 906; W. M. Ivins, 18 *Albany Law Journal*, 85; II Willoughby, *Const. Law*, 1241; XII *Columbia Law Review*, 529.

<sup>57</sup>3 State Trials, N. S. 1; 5 C. & P. 254, 261.

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zens. They were employed (no matter whether their coats were red or brown) not to subvert, but to preserve, the laws and constitution which we all prize so highly.'<sup>583</sup>

At common law the powers of peace officers are in general restricted to the following things:

- (1) To making arrests with, and in some cases without warrant, and overcoming resistance thereto.
- (2) To resisting felonious outrages and all breaches of the peace and repressing violence.
- (3) To dispersing riots, routs, and unlawful assemblies, and clearing the streets.

The powers of the military, coming to the aid of civil authorities, would seem in general to be limited to what peace officers may do, unless valid statutes give them additional powers. At common law a peace officer could not arrest any one merely because suspected of being an agitator or instigator of disturbances, or of being guilty of riot or any other misdemeanor. American common law, however, seems disposed to grant this authority to the military, and to go to the extent of holding that the exercise of the police powers justifies not only the arrest but also the temporary, provisional, preventive detention of dangerous characters during an insurrection. The courts of some states will refuse to release such prisoners on habeas corpus. If this power is to be recognized, it is the courts who are to control it, and inquire from time to time into the facts. We pride ourselves in America on being governed by law; yet there is scarcely a country in Europe in which more independent discretionary power is claimed by virtue of executive authority than here.

There is, however, a sharp distinction between the power of a policeman to arrest and the power of a policeman to constitute himself a court or legislature and try and convict, sentence and execute offenders for violations of law or of his own orders. The governor or militia have no more power to do this than any ordinary police officer, and against the assumption and assertion of such power we should record an emphatic protest. The power of the executive to arrest and detain rioters taken in the act, and also those suspected of criminally inciting to riot and violence, until they may be turned over to the civil courts, is merely an extension of the executive powers of ordinary peace officers; but the power to try and punish is a judicial, not an executive, power.

As a matter of common law, therefore, the powers of the military

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<sup>583</sup> Campbell, *Lives of the Chief Justices*, p. 415; 21 Parl. Hist. 688-698.

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would seem to be preventive, defensive, and ministerial, with no authority to issue orders to citizens generally, or to punish those who disobey commands or commit offenses. Under the ordinary law which at all times prevails, property may be destroyed to prevent the spreading of fire or of pestilence and public danger will justify the impressing of private property into public service in cases of actual or apparent necessity. The maxim *Salus Populi Suprema lex*, that the good of the individual must yield to the public safety, gives liberal scope to the common law justification of necessity. The common law doctrine, while it admits that extraordinary occasions may require extraordinary measures, yet insists that measures for public safety be limited by the reasonable necessities of the case, even in time of war.<sup>61</sup>

It has been suggested by Sir Frederick Pollock that so-called martial law is "the justification by the common law of acts done by necessity for the defense of the commonwealth when there is war in the realm." He suggests that trespasses should be justifiable, when they are "acts which any prudent and courageous magistrate would certainly do under the circumstances," and that "the existence of reasonable and probable cause for the act complained of, having regard to the public danger, is necessary and sufficient to justify it." Juries, he says, are not likely to take an unduly narrow view of what a man may reasonably do in the public interest on such an occasion. But any abuse of power on the pretext of public need for ends of private malice should be severely dealt with. The ordinary courts have at all times jurisdiction to review and regulate military measures and good faith alone is not a sufficient justification.<sup>62</sup>

It may be that we should expand somewhat by statute the common law justification of necessity and public self defense and of the authority of peace officers in these cases. If our laws are defective in regulating the use and possession of fire arms, or of the occasions on which saloons should be closed, or on which those who threaten to violate the peace and incite others to violence may be subjected to preventive detention, they should be amended, and statutes should be enacted to cover possible emergencies. The laws should not be supplemented by the arbitrary orders of executive officers.

The Montana Supreme Court in its recent decision<sup>63</sup> repudiated the claim that the civil courts are without jurisdiction to order the

<sup>61</sup>Case of the King's Prerogative in Saltpetre, 12 Rep. 12; *Mouse's Case*, 12 Rep. 63; *Com. v. Marsh*, 2 Duv. (Ky.) 193; *Mitchell v. Harmony*, 13 How. (U. S.) 115; 14 L. Ed. 75; W. H. Moore, Act of State in English Law, p. 48; 12 *Col. Law Rev.* 529.

<sup>62</sup>F. Pollock, What Is Martial Law? 18 *Law Quar. Rev.* 152.

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release of a prisoner held by the militia after declaration of martial law. The Court further held that neither the governor nor the military under him can lawfully punish for insurrection or for other violations of the law. The courts can not be ousted by the agencies detailed to aid them, nor can their functions be transferred to tribunals unknown to the constitution. The argument that the weakness of civil courts and officers and the state of public feeling would render trials by jury ineffective, that the guilty would not be prosecuted or punished, and that military trials are therefore necessary, is treated with scant respect. Ample relief is afforded by statutory provisions for a change of venue. It is not the function of one department to supply the defects of others or to usurp their functions. This is not even an argument from necessity, but from convenience only. "Necessity" is the excuse invariably given for lynching and for mob law itself.<sup>61</sup> If the civil magistrates and officers are intimidated, or in sympathy with the rioters, they may be removed, as was actually done by the civil courts in Butte. To open the courts is part of the duty devolving upon the military, and no closure by them can be recognized. The attempt to try and punish offenders in Butte during the month of September by military courts was, therefore, abortive, a solemn and pompous farce. All their decisions are wiped out, and the penalties and punishments inflicted must be remitted as far as possible.

It is unfortunate that the military arm of the government must be used in these labor disputes, but when it is so used great precautions should be observed to avoid all appearances of arbitrary, illegal and oppressive action. It is to be hoped that the authorities will keep in view not only the importance of restoring peace, but also the importance of restoring peace with justice, and without depriving the humblest citizen of his confidence in the law and the lawful government. It is necessary to look to the future as well as to the apparent necessities and needs of the moment, and to the possible after-effects of stamping out disorder by the iron heel of martial law.

The laborers and workers of this country may come to believe that in the matter of the use of the military they are being discriminated against and that military power is being arbitrarily used as a tool in the interest of capital but is never exercised to protect the interests of the workers. It behooves those who must wield this dan-

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<sup>60</sup>*Ex parte McDonald, supra.*

<sup>61</sup>By W. Va. Constitution, "any departure therefrom under the plea of necessity or any other plea, is subversive of good government, and tends to anarchy despotism."

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gerous but necessary force to inform themselves of the limits on their authority and avoid the overbearing, bullying, antagonizing attitude that accompanies delusions about martial law, and to remember that their function is to restore the peace, and to preserve and enforce the law, not to supersede it, and that in general they are limited by what under the laws peace officers may do.<sup>63</sup>

From a practical as well as a theoretical point of view, necessity never requires that the constitution be suspended and set aside or that the citizens be subjected to arbitrary military orders. Such claims are not only unfounded in law but also unwarranted on grounds of expediency. Experience proves that officious intermeddling of the military, however benevolent the motive, is not an unalloyed blessing. Lawful authority is adequate to meet any situation that may arise.

State statutes often purport to prescribe the occasions on which martial law or a "state of insurrection and rebellion" (whatever the consequences of that are) may be declared by the governor. In some states there are statutes asserting that members of the militia shall not be liable, civilly or criminally, for acts done while in active service, and that they shall not be prosecuted therefor in any court; also that military officers may exercise their discretion and be the sole judge as to what means are necessary to restore peace. These statutes are for the most part crude and ill-considered attempts at legislation, apparently drawn up by those who have a peculiar eagerness to turn over absolute authority to an irresponsible military dictatorship, without any attempt to make a proper adjustment of the use of force to the safeguards of constitutional liberty. These statutes are no doubt largely unconstitutional, as a deprivation of the fundamental rights of the citizens under both the state and federal constitutions.

It might be supposed that the legal principles governing the use of the military in this country would be thoroughly established. In fact hardly any subject is so buried in darkness and misapprehension. The law is in a dangerous and disgraceful condition, involving in the military, and fraught with peril to the community and to the citizen. In view of the importance of these questions, testing as they do the liberty of the individual citizen on the one hand and the supreme powers of government and social self-preservation on the other, and in view of the sudden and dramatic crisis in which they arise, demanding instant decision, it is not a little strange that they have thus far received so little thoughtful attention. Some military code or

<sup>63</sup>The United States Commission on Industrial Relations is now making an elaborate investigation of this whole subject in all its phases.

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system should be worked out under which the citizen will be protected in his rights, the community in its peace and safety, and the soldier in knowing the extent of his authority. It will require much study and labor on the part of some one to formulate such a code, which may be adopted by the various states, by which the duties and powers of the national guard may be properly defined, and by which measures for public safety may be reconciled with constitutional liberty.

**PROCEEDINGS OF THE SIXTH ANNUAL MEETING OF THE  
AMERICAN INSTITUTE OF CRIMINAL LAW  
AND CRIMINOLOGY.**

**THE EDITORS.**

The Sixth Annual Meeting of the American Institute of Criminal Law and Criminology was convened in the Cabinet Room of the New Willard Hotel, Washington, D. C., October 22, 1914, with President Quincy A. Myers, Justice of the Supreme Court of Indiana, in the chair.

President Myers read a letter from Judge De Courcey, expressing regret for his inability to be present, and proceeded to read his annual address, which is published elsewhere in this issue.

Mr. Nathan William MacChesney, of Chicago, Ill.: "Mr. President, I move you, sir, that the Institute by vote express its appreciation of the review made by the President in this field during the last year, and that the Executive Committee be instructed to prepare the same in the form of a bulletin after its publication in the Journal, in order that it may be available in connection with the work of the Institute."

The motion was seconded, and adopted.

A Nominating Committee of five members was ordered appointed by the Chair for the purpose of presenting in due time a list of officers for the ensuing year.

President Myers: "Now, what is your pleasure? Shall we take up any of the work at this time, or shall it be deferred until tomorrow morning according to the program?"

On motion by Mr. MacChesney it was ordered that we proceed at once to hear committee reports.

Professor E. R. Keedy, of Northwestern University, as Chairman, then reported for the Committee on Insanity and Criminal Responsibility. The report, together with the discussion upon it, appears elsewhere in this issue.

After the discussion of this report the report relating to the business management of the Journal, submitted by Mr. F. B. Crossley, of Northwestern University, was read by Mr. MacChesney of Chicago. On motion this report was referred to an auditing committee under the chairmanship of Prof. E. R. Keedy with instruction to report before the adjournment of the Institute. The reports of the treasurer and the secretary were then received.

## PROCEEDINGS OF THE ANNUAL MEETING

The Institute then adjourned and on the following morning took up the report of the Committee on Sterilization, Mr. Joel D. Hunter, Chief Juvenile Probation Officer of Chicago, Chairman. This report was published in the last issue of this Journal. The discussion upon it turned mainly upon the means for securing the funds recommended by the committee for carrying on the investigation. It was moved by Judge Robert Ralston of Philadelphia that it be the sense of the Institute that the expenditure of \$3,000.00 or more for the investigation proposed in the report is highly desirable, and that the Executive Council should be instructed to use its good offices to secure the funds. The motion was adopted.

In the course of the discussion of this report, Mr. Charles A. Boston, of the New York Bar, was called upon, and spoke as follows:

I do not know that I am fully equipped to speak upon this subject. I fear from the investigation that I have made into the legislation on this subject that there is danger that in this country we may be carried away with emotional excitement. I was glad to hear the recommendation of the committee for an appropriation to investigate the subject further. It seems to me from what I heard of the report that the committee passes without question the assumption that as a social remedy, and quite apart from its effect upon the individual, the facts point to the advisability of this remedy. The report only recommends, so far as I understood, the appropriation of a sum of money for the purpose of investigating one phase of the question, namely, the effect of the operation on the individual operated upon. There is grave danger that the most important phase of the subject is entirely overlooked, and that it is often assumed to be true without any investigation into the hereditary tendency in these various respects which have been specified. After a very extensive investigation into the subject I am inclined to believe that those facts are not established beyond peradventure, and that when the legislature of Indiana recited the laws of hereditary in its preamble to the act it passed it was carried far beyond any justifiable recital of the facts in any legislation. Legislation in the United States has improved in quality, and as it improved in quality it seems to me that it necessarily discourages these operations.

I chance to be quite familiar with some of the aspects of the office of Eugenic Records of the Carnegie Foundation. That office is engaged primarily in the collection of data from selected cases in an effort to deduce conclusions from those data. The Record office is at Cold Spring Harbor, New York, but it operates very closely in connection with a voluntary committee, of very distinguished men



## THE EDITORS

appointed by the American Breeders' Association. I have had an opportunity to consider the literature of that committee, and it seems to me, layman as I am, to jump at conclusions and to assume deductions without a sufficient amount of fundamental data. I trust this Institute will move along conservative lines. I first approached the subject from the standpoint of the constitutional lawyer in a desire to consider whether these crude laws, for every one of them is extremely crude, yet were constitutional in their provisions for helpless members of society. I am inclined to the belief that the laws are all unconstitutional, and largely because of their uncertainty and lack of constitutional protection. I am inclined also to the belief that they approximate utter inability, because the more safeguards you throw around the operation the less effect you have upon the depletion of this undesirable element in the social body.

For your further information, so far as the individual men here are not informed, I would say that this voluntary committee of the American Breeders' Association appears to have approached the subject from the standpoint of breeding only. I venture the suggestion that the question of human heredity in mental characteristics cannot safely be approached from the same standpoint as the development of a particular quality in a particular strain of animal and that there is a long gap between the hereditary of mental characteristics and mental tendency. This is a question of reaction and the development of physical tendencies.

I say that this committee, whose literature I have read at some length, has a very ambitious program, and the character of that program it seems to me will come to those of you who are not already informed as a matter of surprise. It is cold blooded and it passes over as already established the proposition that mental characteristics if they can not be pre-determined certainly, it can be predicated that they are directly the result of heredity tendencies and that they operate in complete accord with the law as far as that law is understood. And the program advances the proposition that for the purpose of improving the breed of the human race it is desirable to install a plant whereby continuously the assumed lower tenth of the population shall be cut off regardless of whether it possesses those defects that have been specifically pointed out, but that it is well for the human race consciously and by law and by common consent to continue forever to cut off one-tenth of the population—that one-tenth to be selected by certain arbitrary rules that are advanced by this voluntary committee. As I have calculated, and as I think the committee admits, if this program should be put into effective operation in this country in the

## PROCEEDINGS OF THE ANNUAL MEETING

course of a hundred years, based upon the present population and assuming that the present population shall in no wise increase, there will be 15,000,000 people among the American population sterilized in the interests of this thesis which they advance as the best possible feature for the improvement of the human race.

Now my own idea, approaching it from the standpoint of constitutional law and from the standpoint of individual interest, is that 15,000,000 of the population of the United States can never be sterilized by any arbitrary company or by any common consent. So that to that extent it appears to me that this is a mere idle dream. But I arose in the first place to give you that little bit of information, and further to comment, from the standpoint of a conservative and an extreme conservatism on these points, upon the attitude of this committee which advises merely an appropriation for the purpose of investigation. If I had any criticism of the report and recommendation it would be that the scope of investigation is limited, but I appreciate that the amount of the appropriation asked for is also limited and would therefore not admit of such a wide investigation. But all the same conservative human beings have got to work to prevent the Carnegie Foundation and its affiliated bodies from regenerating the entire human race by these utterly arbitrary methods of cutting off reproduction.

Mr. MacChesney then reported on the organization of the American Society of Military Law, which is Section 1 of the Institute.

The society, said Mr. MacChesney, a former president of the Institute, was originally formed as Section A of the American Institute upon resolution introduced at the last meeting in Montreal. Pursuant to that resolution the President of the Institute appointed the officers and executive committee. I was appointed president, and Prof. Ballantine, secretary, of the new society. Following our appointment, general correspondence was had with the officers of the army and navy and others interested in the subject. A conference was called to meet in Washington last January, which was attended by representatives of the Army and Navy and of the Attorney General's department. Following that a plan of work was outlined and a constitution was formulated, providing a basis of membership in the section after a considerable amount of correspondence. The response to the invitation to membership was very favorable, and it now seems there will be a large number of men officially interested in this subject, who will desire to join the Institute, in order to become part of that section. The first meeting of that society was held last Monday afternoon, in which Prof. Ballantine read a splendid paper on "Military Orders

## THE EDITORS

as a Substitute for Laws, Courts and Constitutions," which resulted in a lively discussion. (See this paper elsewhere in this issue.) There were justices of five supreme courts present, and representatives of the Army and Navy and of the National Guard of the several states. A wide variation of view was developed and it showed that there was a great need of an organization such as this to take into consideration the various points of view and harmonize them in a way to bring about better results. After the adjournment of the convention meeting an informal smoker was called at the Army and Navy Club at which were present prominent officials. Among others who were present was General Davis, author of one of the leading works on Military Law. A general discussion was entered into, which lasted until nearly two o'clock in the morning, showing the great interest in the subject. I believe that the Section will prove very useful in the field it is intended to cover, and will prove one of the strong parts of the Institute in time. An election was held after the meeting, and General Carter of the United States Army was elected president, and Prof. Ballantine, secretary, and Lt. Col Copperfield, Judge Advocate of Illinois, was elected Chairman of the Executive Committee. I make this report in accordance with a section of the constitution, which requires an annual report of the work accomplished to be made to the Institute, and in the coming year I think great results will be presented for your consideration and action.

The Institute then heard a report on Indeterminate Sentence. Release on Parole and Pardon (Committee F). This report, together with the discussion it elicited, will be published in a later issue of this Journal.

The report on The Employment and Compensation of Prisoners was then offered by the Chairman, Mr. Edwin M. Abbott, of Philadelphia. This was followed by the report of Professor William E. Mikell, of the University of Pennsylvania, on a Proposed Draft of a Code of Criminal Procedure. The report is published elsewhere in this issue, together with the discussion.

The report of the Nominating Committee then followed, and the following officers were elected, after which the Institute adjourned:

### OFFICERS OF THE INSTITUTE—1914-1915.

#### PRESIDENT.

ROBERT RALSTON, Judge of Court of Common Pleas No. 5, City Hall,  
Philadelphia, Pa.

## PROCEEDINGS OF THE ANNUAL MEETING

### VICE-PRESIDENTS.

- CHARLES A. DECOURCY, Justice of the Supreme Judicial Court of Massachusetts, Boston, Mass.  
WILLIAM E. MIKELL, Dean, Law School, University of Pennsylvania, Philadelphia, Pa.  
EMORY S. BOGARDUS, Professor of Sociology, University of Southern California, Los Angeles, California.  
WILLIAM A. WHITE, Superintendent Government Hospital for the Insane, Washington, D. C.  
AMOS W. BUTLER, Secretary State Board of Charities, Indianapolis, Indiana.

### TREASURER.

- BRONSON WINTHROP, 32 Liberty St., New York City.

### SECRETARY.

- EDWIN M. ABBOTT, Chairman of State of Pennsylvania Commission on Revision of Penal Laws, 700-3 Land Title Building, Philadelphia, Pa.

### EXECUTIVE BOARD.

For the term expiring 1915.

- WALTON J. WOOD, Public Defender, Los Angeles, Cal.  
WILLIAM N. GEMMILL, Judge of the Municipal Court, Chicago, Ill.  
GEORGE W. KIRCHWEY, Professor of Law, Columbia University, New York City.  
EDWARD J. McDERMOTT, of the Kentucky Bar, Lieutenant-Governor of Kentucky, Louisville, Ky.

For the term expiring 1916.

- ARTHUR J. TODD, Assistant Professor in Sociology, University of Pittsburgh, Pittsburgh, Pa.  
WILLIAM HEALY, Director of the Juvenile Psychopathic Institute, Winnetka, Ill.  
EMMETT N. PARKER, Justice of the Supreme Court of Washington, Olympia, Washington.  
EDWIN MULREADY, Commissioner of Probation, Court House, Boston, Mass.

For the term expiring 1917.

- EDWIN R. KEEDY, Professor of Law, Northwestern University, Chicago, Ill.  
EDWARD LINDSAY, Member American Anthropological Society and Pennsylvania Bar, Warren, Pa.  
JOHN LISLE, Attorney, Land Title Building, Philadelphia, Pa.

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### EX-OFFICIO.

- JOHN H. WIGMORE**, Professor of Law in Northwestern University, 31 W. Lake St., Chicago, Ill.
- NATHAN WILLIAM MACCHESNEY**, of the Chicago Bar; Commissioner on Uniform State Laws, 30 N. LaSalle St., Chicago, Ill.
- JOHN B. WINSLOW**, Chief Justice of the Supreme Court of Wisconsin, Madison, Wis.
- FREDERIC B. CROSSLEY**, Managing Director of the Journal of the Institute, Librarian of the Elbert H. Gary Collection of Criminal Law and Criminology, Northwestern University, 31 W. Lake St., Chicago, Ill.
- ROBERT H. GAULT**, Managing Editor of the Journal of the Institute, Associate Professor of Psychology in Northwestern University, Evanston, Illinois.
- ORRIN N. CARTER**, Justice of the Supreme Court of Illinois, Chicago.
- EUGENE A. GILMORE**, Professor of Law, State University, Madison, Wis.
- QUINCY A. MYERS**, Justice of the Supreme Court of Indiana, State House, Indianapolis, Ind.

## JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE.

CHESTER G. VERNIER AND ELMER A. WILCOX.

MOTION FOR A NEW TRIAL. O. and T. Phila. Co., Jan. Sess., 1914, Nos. 554 and 555.

*Commonwealth v. Sheppell*, LXXVII, L. I. 636, 23 Dist. Rep. (Pa.), 904. Before Bregy, P. J., Ralston and Barratt, J. J. *Practice, Q. S.*—*Examination of subject only to such observation and surveillance as might, under the circumstances, be necessary to assure his safe custody, is res adjudicata*, both at the trial and on motion for new trial.

### MURDER.

*Points—Duty to instruct as to manslaughter.* The prisoner's wife was found in his room dead from four pistol wounds; the prisoner was found near by, wounded by a pistol shot in the forehead. On trial for her murder, the prisoner refused to testify and the only direct evidence of the crime was the testimony of his son, called by the Commonwealth, that, on the witness' entering the room prisoner by his own physician—*Ruling of the court in banc—Res adjudicata at trial.* The refusal of the court *in banc* to permit a defendant under indictment for murder to submit himself to examination by two physicians, in the presence of his counsel, in advance of the trial, for the purpose of preparing his case, immediately after the shots, the prisoner had said to him that his wife had shot him and that he should go for a "cop." The defendant asked the trial judge to charge that if the jury believed that the killing occurred under such circumstances, the crime might not rise higher than that of manslaughter. The trial judge refused the point without reading it and stated the evidence without comment: *Held*, to be error. Ralston, J., dissents.

### MURDER.

*Points—Duty to charge that no inference can be drawn against prisoner from failure to testify.* On a trial for murder, it is the duty of the trial judge, if requested so to do, to instruct the jury that no inference can be drawn against the prisoner by reason of the fact that he did not testify in his own behalf, notwithstanding the fact that no reference to the prisoner's failure to testify has been made by either the district attorney or the trial judge. The refusal of such a point is error, although the point was not read to the jury. Ralston, J., dissents.

JOHN LISLE

### AN ITALIAN DECISION IN A CASE OF LIBEL.

(From *La Giustizia Penale*, July 29, 1914, p. 1232.) Readers will have seen the letter written by the German dramatist, Hauptmann, to Jean Rolland, in answer to one written by Rolland to Hauptmann. Americans have been puzzled to read in Hauptmann's letter that he had the right to a reply twice as long as Rolland's letter. The sky is cleared by a decision of an Italian court, which holds that the Press Act does not give an editor the right to mutilate the reply of a reader who has been mentioned or indicated in an attack appearing in his paper, nor to suppress any part of it, nor to modify in any way its contents or its form, but must insert the whole of it, in as conspicuous a place as the attack occupied, and just as the author has written it, because the author alone is the judge of what his answer is to be, of the means of his defense, and of the opportuneness of it; provided, however, that he keeps within the limits of the law, and does not speak "injuriously" of the editor, or of a third party. A, the person attacked, who replied to the editor, and sued the latter for not publishing the reply, was *held* not to have been aggrieved, because he went beyond the limits of the law, and said, in the course of his defense: "I have never been anarchistically inclined, and whoever asserts the contrary lies shamelessly. I have scrupulously adhered to the resolution, unmindful of the praises of adversaries and despising the insinuations and the calumnies of certain persons;"

## JUDICIAL DECISIONS

since, although the editor was not mentioned, the author unquestionably referred to him, and since, when one refers to another as a shameless liar and as the disseminator of insinuations and calumnies, he offends his honor, his reputation and his decorum.

ROBERT FERRARI.

### INTERNATIONAL LAW.

*Effect of suspension clause in treaties upon domestic legislation.* To students of international law there is an important decision by the Court of Cassation in Rome, First Section, reported in *La Giustizia Penale* (II, 84 fol.), (July 22, 1914). At the Convention of Berne it was agreed by the contracting parties, which included fourteen European nations, that women and children should work no later than 10 p. m. and no earlier than 5 a. m., and no longer than eight and one-half hours. The agreement was to go into effect "when this convention is ratified by all the governments of the contracting parties." Italy passed a law giving "the government of the king authority to execute fully and entirely the convention signed at Berne the 26th of September, 1906, between Italy (etc., including thirteen other states) for the prevention of night work to women employed in industry." Penal sanctions were attacked. Two governments did not ratify the convention. An employer allowed a woman to work past 10 p. m. Had he violated the criminal law in so doing? The court held that "to execute the convention" meant to "ratify the convention;" that is, Parliament had not put the convention into effect in Italy, but had only given the government authority to ratify the contract of its representatives; because, for making the convention effective, the consent of all the contracting governments was necessary, the clause, "when this (convention) is ratified by all the governments of the contracting parties," meaning that no nation could execute the terms of the Berne Convention unless all the other nations did likewise; and the employer was therefore not bound by the law. Giuseppe Meloni, one of the editors of *La Giustizia Penale*, contributes a learned and interesting note to the case, in which he disagrees with the decision upon the grounds that there is no precedent for it, that the precedents are all against it, and that in reason it is wrong. The clause in dispute "establishes the minimum of ratifications which are necessary, *without other act on the part of any government*, to fix the beginning of the coming into effect of the convention within a certain time." The note is about 3,000 words long, and is a complete, compact, short treatise on "The Perfection of International Treaties While the Sending of the Ratification of the Contracting States Is Awaited; and the Value of a Domestic Law Which Authorizes the Execution of Them." He treats the question under the following heads: 1. The position of the Question. (a) From the side of the decisions; (b) From the theoretical side. 2. International treaties of administrative law. 3. The value of the signa-state, severely criticized him in public speech and then sought to reprobate him tures of the representatives of the various states in preliminary negotiations; the idea and efficacy of a suspensive condition in a contract; when a contract is said to be perfected. 4. Rules of state law (declaration of the will of the state) directed to the execution of the terms of treaties; conclusions. The reasoning of the note seems to be sound.

ROBERT FERRARI.

### LIABILITY OF A FINDER TO THE PENAL LAW.

(From *La Giustizia Penale*, Aug. 20, 1914, p. 1337.) An article found in a corner of the stoop of an inn is considered lost, since it cannot said to be in the "sphere of proprietary activity" of the owner; this sphere of activity extending to the limits of the room or apartment assigned to a person, but not to the whole inn with all its appurtenances, common to all the travelers. A found a bracelet on the stoop of B, an inn. A was arrested for larceny and convicted. Conviction was quashed in the Court of Appeals. The essential element in the crime of larceny is the taking of possession by one's self of that of which another has not only property but also possession, possession being defined as having under custody, immediate or mediate. When, therefore, a thing goes out of the custody of a person, or is no more under the sphere of supervision of the owner, the latter, although retaining over that thing his right as owner, has lost the possession of it, and a person who finds it and appropriates it is not guilty of larceny, because the *contrectatio* is lacking, although he may be guilty of unlawful appropriation of a lost article.

## JUDICIAL DECISIONS

There is room for a Journal of Comparative Law, which will give digests and discussions of the decisions of the courts of last resort of European countries. Nothing can more clearly bring into relief the qualities and the defects of our own law. *La Giustizia Penale* is one of the very best annotated reporters.

ROBERT FERRARI.

### CONSTITUTIONAL LAW.

*Davis v. Berry et al.*, 216 Fed. 413. *Sterilization of criminals.* Acts 35th Gen. Assemb. Iowa, c. 187, providing for the performance of the operation of vasectomy on criminals twice convicted of a felony, is unconstitutional as providing a cruel and unusual punishment. And since the operation is to be performed on an order of the State Board of Parole after a private hearing before the board, not open to the public, and of which the prisoner is not advised until ordered to submit to the operation, it is also unconstitutional as a deprivation of due process of law, which means that every person must have his day in court, must be confronted by his accuser, and given a public hearing according to law in the regular course of its administration through courts of justice. It is also unconstitutional as a bill of attainder, in that it provides for the infliction of a punishment for past offenses by legislative act without a jury trial.

*Commonwealth v. Farmer*, Mass., 106 N. E. 150. *Short forms of indictment.* Rev. Laws, c. 218, setting forth short forms of indictments, does not violate Bill of Rights, art. 12, providing that no subject shall be held to answer for any crime or offense until it is fully, plainly, substantially and formally described to him; nor does it violate Const. U. S., Amend. 14, or any other provision of that constitution, especially in view of sec. 39, authorizing the court to require the prosecution to furnish a bill of particulars.

*Jonson v. United States*, 215 Fed. 679. *White Slave Act.* "Commerce." Since the term "commerce," as used in the federal constitution, granting to Congress the right to legislate with reference to interstate and foreign commerce, is not limited to traffic in or an exchange of commodities, but extends as well to the transportation of persons, and includes navigation and intercourse, giving to Congress not only the right to regulate, but actually to prohibit transportation in the interest of the public welfare, Congress had complete power to pass the White Slave Act, making it a felony to transport or cause to be transported any woman or girl for prostitution, or any other immoral purpose, though the statute be construed as extending beyond commercialized vice to include transportation in interstate commerce of a female for the purpose of mere unlawful sexual intercourse with defendant.

### DETECTIVE.

*Brantley v. State*, Miss., 65 S. 512. *Crime committed to secure evidence.* The defendant was convicted of the statutory crime of acting as the agent of the purchaser in the unlawful purchase of intoxicating liquor. On the trial he offered evidence to show that he had been asked by a deputy sheriff to aid in ferreting out "blind tigers" and particularly in getting evidence against the person from whom he bought this liquor; that after he received the money from the purchaser and before he bought the liquor he reported the case to the deputy sheriff, who asked him to make the purchase, so that evidence might be obtained against the seller, and promised that no harm would result to him from so doing. The trial court excluded this evidence. Held that the evidence was properly excluded as in order to provide the seller with an opportunity to violate the law the defendant committed a crime distinct from and not included in the one the seller was induced to commit. The case was distinguished from those in which the detective coöperates with criminals so that he would be guilty of the crime committed by them if his intention had been the same as theirs. The conviction was affirmed.

### DISORDERLY CONDUCT.

*People v. Sinclair*, 149 N. Y. Supp. 54. *Elements of the Offense.* Laws 1882, c. 1458, provides that every person in the city and county of New York shall be guilty of disorderly conduct tending to a breach of the peace, who in any thoroughfare or public place shall commit any of the following offenses: "(3)



## JUDICIAL DECISIONS

Every person who shall use any threatening, abusive or insulting behavior with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned." Where defendant, occupying no relation to Rockefeller, whom defendant believed to be responsible for certain public occurrences in another by parading in processional form in the street with companions, all wearing crepe, opposite a building where R. had an office, with knowledge that there would probably be persons there who would resent such conduct and might cause a breach of the peace, defendant and his companions, though intending themselves to act peaceably, were guilty of threatening, abusive and insulting behavior whereby a breach of the peace might be occasioned in violation of the above statute declaring that such conduct shall constitute disorderly conduct.

### DISTURBING RELIGIOUS SERVICES.

*Ellis v. State*, Ala. App., 65 So. 412. *Between Services. Intent.* While the congregation, who had attended the regular morning services at a church, were eating a basket dinner on the church grounds, during the intermission before the afternoon services began, the defendant used language which created a disturbance. Held that the congregation assembled upon the church grounds for religious worship was protected by the statute though the disturbance took place at a time when the religious services were not in progress. In the language intentionally used by the defendant was such as to disturb the assembly, and did disturb them, it was not necessary to a conviction that it should have been uttered for the purpose of disturbing them. The conviction was affirmed.

### ESCAPE AFTER CONVICTION.

*State v. Pishner*, W. Va., 81 S. E. 1046. *Conviction reversed.* The defendant was convicted of a felony and confined in jail pending a writ of error from that judgment. On Feb. 27 he broke jail and was recaptured the next day. On March 7 he was indicted for escaping. On June 17 the supreme court reversed the conviction in the former case and discharged him on the ground that there was no evidence to warrant the conviction. He was then tried on the second indictment and convicted. The statute under which he was this time convicted provides that "a person confined in jail on conviction of a criminal offense, who escapes by force or violence," shall receive a specified punishment. The majority of the court thought the statute applied only to persons who had been convicted by a final judgment of the court. The conviction in the trial court was not final, as a writ of error had issued and it was necessary to await the decision on the writ before it could be known whether the conviction was final. As the mandate of the supreme court reversed the judgment below and discharged the prisoner, it was conclusive proof that he was not guilty. Hence he did not escape while confined "on conviction of a criminal offense." Two judges dissented. The case is distinguishable from *State v. Lewis*, 19 Kan. 261, immortalized by Eugene T. Ware in the poem printed on page 266 of the official report. The Kansas statute applied to escape before conviction.

### FORMER JEOPARDY.

*State v. Rose*, 106 N. E. 50, Ohio. *Identity of offense.* Where a person has been in jeopardy upon an information or affidavit charging that he contributed to the moral delinquency of a female person in violation of sec. 1654, General Code, such jeopardy cannot be successfully pleaded as a bar to a prosecution by indictment on a charge of rape under sec. 12413, General Code. The provision of the constitution relating to jeopardy is in the following words: "No person shall be twice put in jeopardy for the same offense." The offense charged in the information is not the same offense and does not include the offense charged in the indictment, and hence the defense of double jeopardy must fail. The words, "same offense," mean same offense, not the same transaction, not the same acts, not the same circumstances or same situation.

*People v. Mendelson*, Ill., 106 N. E. 249. *Identity of offenses.* A trial and acquittal on a charge of burglary and larceny by breaking and entering the premises of certain parties at a certain street number was not sufficient as a plea of former jeopardy in the trial for the burglary and larceny of the goods of certain

## JUDICIAL DECISIONS

other parties at the same street number, since the offenses were not identical within the rule that, if the facts charged in the subsequent indictment would, if found to be true, have warranted a conviction upon the first one, the former judgment is a bar to the subsequent prosecution, otherwise not.

### INTOXICATING LIQUORS.

*Skermetta v. State*, Miss., 65 So. 502. *Serving wine with meals.* The defendant had three boarders at seventy-five cents per day. He served wine at dinner. No extra charge was made for the wine. All of the parties were natives of Austria, where wine forms a part of every dinner as a universal custom. Held that this constituted a sale of intoxicating liquors in violation of the prohibition law of the state.

### LARCENY.

*In re La Page*, 216 Fed. 256. *Possession of stolen property as evidence of larceny.* While the possession of recently stolen property is some evidence that the possessor is the thief, such possession must be a conscious possession, and, where the evidence makes it at least just as probable that the stolen property was placed on the premises of the suspected party by someone else, the presence of the property on his premises has no probative force.

### MORTGAGED CROPS.

*Courtney v. State*, Ala. App., 65 So. 433. *Sale to defraud mortgagee.* The defendant and his brother owned a tract of land. They agreed with one Hattaway to furnish the land and a team to cultivate it if Hattaway would furnish the labor, and that he should have half the crop raised, they the other half. Under the law of Alabama this arrangement fixed the legal title to the crop in the owners of the land, subject to a lien in favor of Hattaway, which had priority to all other liens on the crop, for the value of his half. After the making of the agreement with Hattaway the defendant and his brother mortgaged the crop to a bank. After this mortgage had been made and recorded, the defendant joined Hattaway in a mortgage of Hattaway's interest in the crop to one Tisdale. When the crop was harvested the defendant, either alone or in conjunction with his brother, sold it and paid the entire proceeds to the bank, to be applied on the debt to it. Held that the defendant was properly convicted of selling the crop with intent to hinder, delay or defraud the mortgagee. By the mortgage Tisdale became entitled to the benefit of Hattaway's first lien on the crop. While the bank under its mortgage was entitled to possession of the crop, subject to Hattaway's lien, it was not entitled to the entire proceeds from its sale. As the sale and payment of the entire proceeds to the bank would naturally tend to hinder, delay or defraud Tisdale, the jury were justified in drawing the inference that the defendant intended this result.

### NOLLO CONTENDERE.

*Chester v. State*, Miss., 65 So. 510. *Not an admission of guilt.* On the trial of the defendant for unlawfully keeping for sale intoxicating liquors, the state was permitted to prove that the defendant had been arraigned in the city court on the charge of keeping liquor for sale in violation of the city ordinance, the charge being based on the same facts testified to in the trial in the state court, and that her attorney had pleaded *nolo contendere*. It did not appear that she was present in the city court when that plea was entered. She had paid the fine imposed by that court. Held that the evidence should not have been admitted. While the plea had the same effect in the case pending in the city court as would a plea of guilty, it did not have any effect beyond that particular case, and could not be treated in a different proceeding as an admission of guilt.

### PARDON.

*People ex rel. Robin v. Hayes, Warden*, 149 N. Y. Supp. 250. *Authority of a governor to pardon after being impeached.* Under the const., art. 4, sec. 5, providing that the governor shall have power to grant pardons, and sec. 6, providing that in case of impeachment of the governor, the powers and duties of the office

## JUDICIAL DECISIONS

shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease, while the impeachment of a governor by the assembly did not deprive him of the office, the powers and duties of the office devolved upon the lieutenant-governor pending the trial of the charges, and an attempt thereafter by the governor to exercise the pardoning power was not valid as an act of a de facto governor, since a "de facto governor" is an actual governor in fact and reality, as distinguished from a governor de jure or by right, while to "devolve" means to transfer from one person to another, to deliver over, to hand down.

### PROSTITUTION.

*Johnson v. United States*, 215 Fed. 679. *Meaning of "other immoral purpose" in White Slave Act.* The White Slave Act makes it a felony for anyone knowingly to transport, or cause to be transported or aid or assist in obtaining transportation for, or in transporting in interstate or foreign commerce, any woman or girl for the purpose of prostitution or debauchery, or any other immoral purpose. Held that while the term "prostitution" involves the financial element and signifies commercialized vice, the words "other immoral purpose" as used in the statute are not limited to kindred offenses involving the sharing of profits by hire of the woman's body, and hence their meaning was fulfilled by sexual debauchery between the female and the defendant involving no financial element.

### TRIAL.

*People v. Spencer*, 106 N. E. 219, Ill. *Taking picture of defendant.* The taking of defendant's picture in the presence of the jury, during the recess of the court, showing him on the witness stand pointing his finger at the jury, was not prejudicial.

### VARIANCE.

*Spanish v. State*, Fla., 65 So. 459. *Specific property stolen.* An information charging robbery alleged that the defendant stole a ten dollar bill, a five dollar bill, a one dollar bill and a silver dollar, all of the value of seventeen dollars. The state proved that the defendant took seventeen dollars, but did not show how this amount was made up. Held that there was a fatal variance between the charge and the proof, as the state had not proved that any of the money specifically described had been stolen. It was said that seventeen dollars in minor coins might have been stolen, and, if so, the defendant, on a new information charging theft of such minor coins, would have difficulty in establishing the fact that he had been previously convicted of that offense on the present information. The conviction was reversed.

## NOTES ON CURRENT AND RECENT EVENTS.

### ANTHROPOLOGY—PSYCHOLOGY—LEGAL MEDICINE.

**Report of the Department of Research in the Jeffersonville Reformatory.**—The following is taken from the report of the Jeffersonville (Ind.) Reformatory. It covers the year 1912-1913. The Department of Research in a reformatory is somewhat of an innovation. Such reports as the following deserve attention:

"In the summer of 1912 a plan that had long been in the mind of the general superintendent of the Indiana Reformatory and frequently the topic of conversation among scientists and officials of the state took upon itself a definite form in the establishment of a Department of Research at this institution. It was the thought of the board of trustees and the general superintendent that the new department should not be one merely of investigation, but should, so far as practicable, take such oversight of the affairs of the institution as would make possible the application of the findings of the laboratories to practical administration. To this end the directorship of the Department of Research carried with it the office of associate superintendent. This movement was strictly a new departure in the conduct of the affairs of penal and correctional institutions.

"The psychological laboratory was the first department to be equipped and opened for work. Later the Department of Medical Research and the Department of Sociological Research followed.

"Since a more detailed report of the first year's work is forthcoming shortly, it is our purpose here merely to suggest the lines of work which are being carried out and to make such recommendations as appeal to us as being of the most importance.

#### *Psychological Laboratory.*

"It has been recognized for some time by those who have had to do in any intimate capacity with the criminal class that, as a whole, they are of a very low mental order, and yet sufficient data to support this rather widespread belief by results of sufficient investigation have been lacking. The tests applied in the various clinics needed to be thoroughly tested, corrected and adapted through a considerable period of time with a great number of subjects. However, the returns to date are indicative and of very valuable significance. Our investigations have gone to show that at least one-half of the population of the institution are subnormal.

"The range and degree of defectiveness affords an interesting study. There are those of positive psychosis—the insane, including alcoholics, drug fiends, epileptics and feeble-minded—imbeciles, morons, and those of but slight subnormality. As a class, all of these reveal to the institution clinician a long list of symptoms and reactions, which would have led an alienist at once, under any circumstances and surroundings, to a correct diagnosis of their condition. While this group is disposed of comparatively easily, the remaining fifty per cent. of the inmates forms a class which furnishes a problem of the greatest complexity. Anomalies of intellect, emotion and will are everywhere presenting themselves for analysis.

"For the purpose of classification the psychological laboratory has adopted the following outline, which we have, so far, found to provide all the groups necessary for the distribution of our entire population:

"The habitual criminal.

"The born criminal.

"The criminal through passion.

"The criminal of positive psychosis.

"The weak-minded subject of suggestion or the criminal by chance.

"The accidental criminal, or the criminal by mischance.

"The division of the inmates upon the basis of this classification follows the

## DEPARTMENT OF RESEARCH

most careful diagnosis, revealing social, physical and mental pathology. Inquiry is made into the social condition, nativity, occupation, religion and habits of the parents, criminal and medical history of the family, economic conditions and general surroundings of the home. The results of the medical examination are the second factor, while the outcome of the psychological tests and observations constitutes the final element. This diagnosis is made for the purpose of discovering not only the chief cause, but also the contributing causes of the criminal activity of the subject.

"For purposes of immediate action in each case the following symbol outline has been adopted:

"Aa Good mentality with good educational advantages.

"Ab	"	"	"	fair	"	"
"Ac	"	"	"	poor	"	"
"Ba	Fair	"	"	good	"	"
"Bb	"	"	"	fair	"	"
"Bc	"	"	"	poor	"	"
"Ca	Poor	"	"	good	"	"
"Cb	"	"	"	fair	"	"
"Cc	"	"	"	poor	"	"
"D	Subnormal					
"E	Moron					
"F	Imbecile					
"G	Specialized Mental Defective					
"H	Dull from Physical Causes					
"I	Subject of Psychosis					
"U	Unclassified					

"The investigations which go to make up the mental examination are in the following fields: preception, association, memory, reason, orientation, fatigue, mental activity, motor control, moral appreciation, ability to profit by experience, attention, general information, general interest and ability to plan. Each subject is given the Binet-Simon test, while observations are made as to results of formal educational experience, ability to carry on conversation and the nature of the reaction to natural and artificial environment.

"It will be seen readily that, due to the effects of some peculiar environment before the inmate enters, some temporary condition may make it impossible for the correct diagnosis to be made at the time; while foreigners, because of their lack of ability to handle the English language, and perhaps a few others because of the fact that they will not at once lend themselves to the spirit of the examination, consciously making a correct diagnosis impossible, cannot be classified. The facts obtained from the investigations carried on by the various departments of the laboratory form the basis of the treatment of the individual inmate from the day of his incarceration. His place in the school of letters, his location in the trade school, his recreation and his discipline are all dictated by the diagnosis made in the laboratory.

### *"Medical Laboratory.*

"Besides furnishing for each case a complete medical examination, the Medical Department which has recently opened up its new laboratory, has made a valuable investigation as to the physical measurements, not only of the arrivals during the year, but of the inmates extending back over a considerable period of time. We believe that the report which follows furnishes information of significance:

#### *Murder.*

Average age .....	29 years
Average weight .....	141 pounds
Average reach .....	76 inches
Average chest expansion.....	2½ inches
Average height .....	5 ft. 7½ inches

There are 177 men in this class.

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### *Burglary, Entering a House to Commit a Felony, and Robbery.*

Average age .....	22 years
Average weight .....	152 pounds
Average reach .....	76 inches
Average height .....	5 ft. 7¾ inches

There are 2,665 men in this class.

### *Grand and Petit Larceny.*

Average age .....	21 years
Average weight .....	140 pounds
Average reach .....	71 inches
Average height .....	5 ft. 4½ inches

There are 2,583 men in this class.

### *Sexual Crimes.*

Average age .....	23 years
Average weight .....	142 pounds
Average reach .....	74 inches
Average height .....	5 ft. 6¾ inches
Average chest expansion.....	3¼ inches

There are 255 men in this class.

### *Recidivists.*

Average age .....	27 years
Average weight .....	159 pounds
Average reach .....	76 inches
Average height .....	5 ft. 8¼ inches
Average chest expansion.....	2¾ inches

These averages are based on 327 men.

### *Average of All the Men Who Have Been in the Institution.*

Average age .....	23 years
Average weight .....	143 pounds
Average reach .....	74 inches
Average height .....	5 ft. 6¾ inches
Average chest expansion.....	3¾ inches

There are 5,680 men in this class.

"Compared with college and university classes the above statistics are distinctly suggestive of physical inferiority, but when compared with statistics of general life insurance they are less indictive.

### *Department of Sociology.*

"While the investigations of the past year have led us into a very wide field of research, we believe the following items covering the four hundred sixteen arrivals during the year to be of very great importance:

"The average age of those committed is 21.66 years, twenty-three per cent. of whom had left home for various reasons before sixteen years of age; seventy-six per cent. before the age of twenty-one.

"Sixty per cent. come from disorganized homes—homes broken up because of death or divorce.

"Twenty-one per cent. had suffered previous commitments because of law violations. Forty-two per cent. had been arrested previously, while only thirty-six per cent. confess this present arrest and incarceration to be for the first offense.

"Eight per cent of the four hundred sixteen are illiterate. The greater number who had enjoyed educational advantages left school at the fifth grade; 2.6 per cent had high school education, while only four arrivals claimed to have had advantage of college or university training.

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"Thirty-two per cent were idle at the time that the crime was committed.

"An investigation running back through the past six years shows that fifty-nine per cent. of the inmates were users of intoxicating liquors; eighty per cent. used tobacco in one form or another, while fifty per cent. were addicted to the use of cigarettes.

"After the closest study of the situation during the last year, I beg leave to make the following recommendations:

"Analysis of our population shows at once the necessity of careful segregation upon the basis of the nature of the boys committed to this institution. It goes without saying that that kind of equipment which is essential for the education and development of normal boys is in a large measure quite useless in the case of boys of marked defectiveness. This fact entails upon the state an unwarranted waste in the present organization. It is fair to say that probably few more than half of the population of the institution can receive to advantage the ordinary school of letters and trade school training. Specific and peculiar formal educative processes must be furnished. The first step towards such a segregation which commends itself at once is the purchase and equipment of a farm. A very large proportion of the defective boys will not only do well, but will take a lively interest in both agriculture and horticulture. It is a tradition in the institution that the largest percentage of our paroled boys "make good" on the farm. Approximately twenty per cent of the arrivals last year were farmers, and in all probability these will return to the farm upon release. These boys should be given the opportunity to learn to carry on that industry scientifically. Both the boys and the state will be benefited thereby.

"The trades schools of the institution need at once a well-trained superintendent who shall have charge of the organization and general conduct of all schools in which trades are taught. Such a man must needs be a specialist, who has not only the practical training, but the theoretical understanding of the various principles involved in the manufacturing industries. We recommend, too, that where a trade school enrolls twenty-five men or more, the instructor be furnished an assistant. It is particularly true of the class of men who come to the institution that their progress depends very largely upon personal oversight and assistance. If we are to teach habits of industry and mastery of details in the comparatively short time that these men remain with us, it is absolutely necessary that their development and training be made the subject of personal attention on the part of an instructor well versed in the particular trade the school is attempting to teach.

"We recommend further that a well ordered gymnasium be opened to supplement the work in the Military Department. Great good could be accomplished in correcting the physical defects of the inmates through careful, systematic calisthenics. The effect of scientific physical culture upon both the physical and the mental make-up of the subject is too well recognized to need argument.

"In our opinion, at least one more trade school should be added to our list. We have in mind a machine shop. Not only does the peculiar adaptability of a large number of our men argue the desirability of this school, but the industries of the Middle West will at all times furnish opportunity for the practice of the machinist trade to any well-trained apprentice who leaves our institution.

"I recommend further the employment of a larger corps of field agents. There is little doubt that much of the delinquency which follows the release of our men on parole is due to the fact that, with our present force, we are unable to give them such oversight as they need. From six hundred to eight hundred, made up of institution paroles, governor's parole and cases of suspended sentence, are constantly on the lists of the state agent. It is impossible for two or three officers to give these cases adequate attention. It must be remembered, too, that the assistant state agents must give a good deal of time while in the field to the securing of positions for those authorized for parole and awaiting assignments. Until able to do better, we recommended one worker be placed in the field for each one hundred wards of the institution. This recommendation comes from this department because a knowledge of the environ-

## STUDY OF JUVENILE OFFENDER

ment from which these inmates come is absolutely necessary for an understanding of the contributing causes of their downfall. The field workers would furnish this information. In a large number of cases a return to the same environment would simply mean a repetition of the violation. A recognition of the social pathology of the inmate would lead to a prognosis of reformation only in a controlled environment. An institution should be known by the result of its work. At present we have little opportunity to check up on these results and less chance to provide for the paroled inmates amidst promising conditions." \* \* \*

### **The Study of the Juvenile Offender in the Kansas Industrial School.—**

The following is taken from the seventeenth biennial report of the Industrial School for Boys at Topeka, Kansas. The report covers the two years ending June 30, 1914. The extract below shows the scope of the work that is being done in the Kansas institution in the individual study of boys:

"Reference has been made in former reports of this institution to the importance of an intimate study of individual differences among the boys committed to the school and to the fact that the problem of the juvenile delinquent is the problem, in great measure, of the backward child. An effort has been made to apply this view of the problem, and through the cooperation of the Department of Education of the State University, to introduce a scientific and systematic study of the individual boy as he comes to school. This has been done in connection with the Binet tests which have been conducted during the period. Arrangements have already been made to extend the scope of these studies during the coming year whereby a more extended psychological diagnosis will be made of each boy. During the last few months the experiment has been made of reporting to the parents of each boy the results of our examination with our diagnosis of the causes of the boy's waywardness and suggesting the manner of the parents' cooperation. The results have been fairly satisfactory and it is proposed to give the plan a further trial.

"The study of individual differences of the deviating child will disclose a variety of types. A few are here given for the purpose of illustrating, in briefest outline, the method and scope of these studies.

"*A. B.—Fifteen years of age.* Mentally this boy is about ten years of age; that is, he has the memory, the imagination and the perception of a boy of this age. He has a good store of common sense, a good power of attention and the motor control that one would expect in a ten-year-old boy. His condition is due almost entirely to pre-natal conditions, being clearly a case of arrested development. His moral status is in keeping with his physical and mental condition. He can never become a normal child and will probably remain a fit subject for institutional care, although there is a possibility of improvement under proper training. Had the boy's condition been discovered and intelligently treated in early life, and had he been given the advantages of the kindergarten, his physical, mental and moral condition would have been greatly benefited.

Some years ago this child was injured about the head in an accident, and the mother, seeking some cause for the child's defectiveness, attributed his shortcomings to this fact, but no evidence of such a source of the boy's retardation could be found.

"*C. D.—Fourteen years of age.* This case represents the type of a vigorous youth, at the adolescent period, rebelling against the injudicious restraints of an over-zealous mother. The companionship of the father instead of the nagging of the mother would have reclaimed this boy.

Mentally the boy tested normal. The difficulty lay in his lack of normal emotional development. His imagery was good but narrow in its range. He lacked imagination and was careless in his perception and observation. His sense of justice was undeveloped and his moral standard was that of not being found out. In manner he was reserved and seclusive. He had not been allowed to do the things that a boy loves to do. For this reason, when freed from restraint, he went beyond bounds, because his power of inhibition was weak and his moral standard was not high enough to hold him in check. He had not been required to do the things a boy ought to do. His own personality had not been developed because it had been overshadowed by the mother's personality. Inci-



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dentally he was troubled with adenoid growth and diseased tonsils, and was slightly defective in sight and hearing.

"*E. F.—Sixteen years of age.* Father dead, mother and one brother, eleven years old, living. Mother works for a living. The boy lived with his grandfather on a farm, but did not like farming and ran away. Chewed tobacco and smoked a pipe and cigarettes. At first stole money from his home, later from other people.

"Mentally this boy was eight years old. His mind as a whole was dull and stupid. Perception and attention were fair but memory and imagination were undeveloped. His judgments were inaccurate and subject to change with a new suggestion. Utterly unreliable.

"This boy lacked the finer sentiments and refinements of the emotional life. Ethical, esthetic and religious impulses were undeveloped. A case of moral degeneracy.

"The above are but three of many types, each one of which displays some form of arrested or retarded development and confirms the complexity of the problem of delinquency among children."

R. H. G.

## PAROLE—PROBATION.

**A Parole Record.**—The accompanying pages are a portion of a "calendar" or parole record prepared at the Reformatory for Women for the Board of Parole of the institution. It was prepared by Mrs. Jessie Hodder, superintendent of the reformatory, and was presented at the St. Paul meeting of the American Association in October, 1914.

The first page is the index to the entire parole record for the given month; the histories which follow are given as samples of the parole record as a whole.

They are compiled from the institution records (an outline of which will be shown at this meeting) by the Investigating Department of the institution.

A sincere effort is made to bring together all facts having a bearing on the probable causes, mental, physical and social, of the crime committed, and on the future outlook of the woman considered.

Each month a varying number of inmates (women) become eligible for parole under the terms of the indeterminate sentence. These women have earned through their conduct, industry and general development a right to a hearing by the Board of Parole.

The Board of Parole consists of the chairman and two lady members of the Board of Prison Commissioners. It holds its meetings at the reformatory as often as is necessary to give a just and detailed hearing to each applicant. The clerk of the institution is secretary of the Board of Parole.

There are present at the hearings the state parole agent, the resident physician, a field worker of the institution, a stenographer, the superintendent, the secretary, and, when necessary, any other officers of the institution whose experience with a given inmate will be helpful in a just estimate of her. There are invited to the meetings the judges of the committing courts, probation officers and others who have a constructive interest in the work.

Before the woman enters the room her history as given in the accompanying parole record is read aloud. She then appears and presents her case from her own point of view. She is aided by a sympathetic attitude from all present. Questions and answers are recorded by the stenographer. (The stenographic record is especially helpful if a parole is denied, in which case it may be reconsidered in four months; it is also helpful in case parole is granted but is later revoked.)

The woman is urged to speak freely to the board and tell her plans for the future and her belief about the past. She then withdraws from the hearing; the case is discussed and a vote taken; she is later informed of the board's decision.

## PAROLE RECORD

### *Parole Record.*

#### I. Identifying Data:

Name	Age	Color	Date of Birth	Place of Birth
Mary Rice	25	White	Nov. 27, 1889	New York City

#### II. Reason for Desiring Parole:

"I am anxious to go out because I want to be a manicurist and have a place of my own. I think I have been here long enough."

#### III. Data from Court, Oct. 25, 1914:

##### A. Immediate Court History:

- |                           |                          |
|---------------------------|--------------------------|
| 1. Charge                 | Larceny                  |
| 2. Plea                   | Guilty                   |
| 3. Court                  | Municipal, Lynn          |
| 4. Judge                  | Roberts                  |
| 5. Date of Commitment     | Jan. 3, 1914             |
| 6. Term of Sentence       | Five years indeterminate |
| 7. Expiration of Sentence | Jan. 2, 1919             |

##### B. Previous Court History:

- |                 |                                 |           |
|-----------------|---------------------------------|-----------|
| 1. Aug. 3, 1913 | Fornication                     | Probation |
| 2. Dec. 2, 1913 | Larceny                         | R. W. ss  |
| 3. Jan. 2, 1914 | Unlawful possession of morphine | On file   |

(Verified by Prob. Officer Keefe, Lynn)

#### IV. Data from Inmate:

##### A. Family History:

1. Father—Phillip Rice, 30, died 16 yrs. ago, typhoid. Irish, born in N. B., R. C. Education—Common Sch.; owned tea store.
2. Mother—Rose Shea, 42, 3 Ash St., Lynn, Mass. Eng., born in N. B., R. C. Educ.—First yr. high; housekeeper.
3. Stepfather—Bruce F. Williams, 58, above address. Eng., born in N. B., Epis. Educ.—Good, works in city market of Peters & Scott, Lynn, Mass. as salesman (\$25 a wk. in summer, \$22 in winter); hrs.—7 a. m.—6 p. m.; hr. at noon.
4. Fraternity—a. Mary (s), *subject of record*.
5. Relatives—a. Mat. uncle—Daniel Shea, 65 (m.), 14 State St., Wellesley, Mass.
6. Court record—No arrests.
7. Habits—Father alc.

##### B. Personal History:

1. Infancy—Normal. M.'s mother left her father when M. was 3 yrs. old because he drank and would not support her.
2. Childhood—She lived with grandparents in New York until 5 yrs. old, when they moved to Lynn. Her mother worked in Gleason's corset dept., earning \$9 a wk.; for several years M. attended Pub. Sch. from 7-13, finishing the 9th grade in Pitt's Gram. Sch., Salem St. Miss Lewis—teacher. Liked sch. Used the Pub. Library, enjoying such books as "Little Women." Played games with her girl schoolmates, either at her home or theirs.
3. Adolescence—Menstruation which began at 15, was normal. Attended Lynn High Sch. until 17; wanted to earn money so left in Dec. of 4th year. Prin. Mr. Henry Jones, Miss Louise Ross, English teacher was a special favorite with her. "If I had gotten my diploma, I would have lived a better life." Wanted to go to Wellesley College. Some of Dicken's works were compulsory in sch; enjoyed "Old Curiosity Shop" and "David Copperfield;" considers Thackeray dry "until you get in the middle of it." Worked for a Mr. Stone, contractor, 664 Washington St., Lynn, doing typewriting, at \$7 a wk.; later, \$8.50, from May, 1908 to Aug., 1911. Lived at home and paid \$4 a wk. for board when she could. Left "because I didn't feel good and didn't feel like going back." From the fall of 1911 to Sept. 1913, worked in

## PAROLE RECORD

Sampson's factory, Chelsea, doing piece work (binding), averaging about \$11 a wk.; Mr. Hayes, boss; hrs.—8 a. m. to 5 p. m. Attended dancing sch. once a wk. from 14-16. Entertained friends in her home if she wished. Had a few girl friends; was especially fond of Fred Brown, a schoolmate, with whom she was allowed to go out occasionally.

### 4. Delinquencies—

- a. First Offense—Went with Brown to Haywood hotel for supper. He ordered beer. "I didn't want to admit I didn't know what it was, so drank it." Was introduced to May Smith, who told her she was foolish to take liquor when dope was so much easier. May taught her how to use it.
- b. Arrest and sentence—Went to Steven's hotel in Aug., 1913, to get dope from May Smith. While in her room the hotel was raided and Mary was held for Forn. There was no evidence against her so she was allowed to go on probation. The following Dec. she went into Marsh's dept. store with a Jennie Fiske to buy a waist. Jennie evidently took one, but "I did not see her as she was too clever for me and I am not wise to those tricks." As they were going out the door M. noticed two women following them. When she asked Jennie what the matter was, Jennie dropped the bundle and ran, but the women seized them both. "Of course I was just as bad because I was with her, but I didn't take anything."
- c. History of present commitment—M. first used heroin in Apr. 1913 after meeting May Smith. From Apr. to Aug. went to May's room once a wk. and took dope "because I thought it smart." In Sept. began taking it every day because she had a "contracted habit." Bought it of Patsy Sheehan, who owned a drug store on River St. Used a little cocaine for two mos., but stopped it because she realized that if she got that habit on her she would go to any extent to get the money for it. At one time she even thought she would go on the streets to get money, "but I was never a prostitute." Realizing her danger she broke the habit and has never touched cocaine since. Left home three mos. ago, when she began to use morphine hypodermically. The druggist had been arrested and it was hard to get heroin; morphine, however, was peddled on the streets, and she used about six grains a day. It stimulated her and "made me feel more like a human being." M. visited an uncle in Wellesley, making an excuse to go to the city once a wk. for dope. At the time of her arrest went to Lynn for a couple hrs. to get dope; met a girl; went to her room, staying over night. On her way to breakfast, made arrangements with a man on the street to get morphine. Later, talked with two notorious characters and was arrested by a "plain clothes man." The case was placed on file and she was sent to Sherborn on the former charge of larceny.

### 5. Attitudes—

- a. Toward the past—Blames this May Smith for her arrest as she taught her to use dope.
- b. Toward family—Is anxious to return to her mother who has always been very good to her.
- c. Toward future rehabilitation—Is very anxious to break her habit and live "a straight life."

### V. Data from Officers of Institution:

- A. Report of Receiving Matron, Jan. 3, 1914—Head and body clean; clothing good, rather extravagant, very cool and self-possessed in manner.
- B. Report of Physician—
  1. Medical—1, 4, '14. Cond. on entrance; development fair; nutrition poor; wt.-92 lbs. Has taken heroin, morphine, cocaine for three yrs.; smoked cigarettes for seven yrs.; sight and hearing good; slight vulvo vaginitis; bacteriological smear for gonococci—positive.

## PAROLE RECORD

- 1, 18; 14. Wasserman reaction for syphilis—doubtful.  
9, 1; 14. General cond. greatly improved; gain in wt. of 44 lbs., present wt.-136 lbs. Vulvo vaginitis cleared up clinically; bacteriological smear for gonococci—negative. No clinical symptoms of syphilis seen while in institution.
2. Mental—9, 1; 14. Educ. advantages good. Attended sch. from 7-17, reaching junior year in High sch. Results of educ. training—good; native ability good.
- C. Industrial Report (Shirt room) 9, 1; 14.—Placed first as grade helper to see if she was capable of hard work. 3, 1; 14.—was changed to shirt room where she was placed on the buttonhole machine, a position requiring efficiency and responsibility. Indifferent toward work. Worked in 20-30 doz. shirts a day, averaging about 2,000 buttonholes; fairly well done. Although suave, externally, she is known to have been a disturbing element breaking down loyalty to the institution of other women.
- D. Educational Report (teacher) 9, 1; 14—Has taken an active part in current events class, in connection with which she has done constructive reading in histories of foreign countries.
- E. Social Report (deputy) 9, 1; 14—At first refused to scrub because "it will hurt my hands for typewriting." Her general attitude has remained much the same since entrance. Has been clever enough to slide through the institution with little friction. Has preferred to talk with other girls of the same type, rather than take part in games. Her underlying idea seems to be to carry on successfully outside, the life that she has chosen.
- F. Superintendent's Impressions—Lazy and shiftless; affected in manner where men are around; apparently shocked when told of her defects. Will keep up the method which she has found to pay in world of commercialized vice. Is a prostitute of the individualist type. The institution has failed with her, as she gives no promises of fitting into any community scheme. Is a searcher after friends who will fit her individual needs.

## VI. Data from Outside Agencies and Individuals:

### A. Family and Relatives—

1. Mother—3 Ash St., Lynn, Aug. 15, 1914. Gives daughter Mary's history as follows:—
- a. Heredity—  
Pat. grandfather, sea captain, alc.; killed himself with razor.  
Pat. grandmother "peculiar"; lived with another man before husband's death.  
Pat. uncle—Edward, immoral; died in delirium tremens.  
Pat. uncle—Frank, died of Tb. "Queer, partly deaf and only talked sort of gibberish." Wife left him on account of his immorality.
- b. Parental—Father notorious liar; alc.; immoral. Deserted wife just before Mary's birth.
- c. Birth and Infancy—Mary born in St. John, N. B., Feb. 28, 1890; birth normal; breast fed. Walked and talked at 13 mos. At 3, was dropped down stairs and hurt on head; stunned and unconscious for a short time.
- d. Childhood—Mary came to Lynn with mother to live with mat. grandparents; mother getting divorce from husband on charge of adultery. The former got work in Corset Dept. of R. H. Gleason's and was obliged to give the training of M. over to grandparents, who spoiled her. She was not an affectionate child and punishments had no effect on her; careless and irresponsible. Went to Pub. Sch. at 5; promoted every yr. and showed interest in studies and reading. Used children's room in Pub. Library a good deal and cared for books. Would read by herself for two or three hrs. at

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a time. Grandmother would not let her bring playmates to the house because they made too much noise. When 12, mother remarried and after that was able to give up work.

- e. Adolescence—Menstruation began at 12. Mother had found her reading books on sex hygiene which girl had given her, so talked things over with her. Was confirmed when 14 in St. Ann's Episcopal Church, where she had attended since a child. Mother and stepfather both encouraged her to bring friends to house, and she seemed to go around with a good crowd of young people, until the third year in High Sch. She got in with a bad lot of girls, one of whom—Fannie Taylor, had frequented a bad house on Franklin St. Took M. there with her one afternoon. M. later planned to run away to New York with this girl but was headed off by her mother. Nasty notes from boys were found in her school book. Refused to go back the last year in High Sch. but got work for herself as office girl at \$5 a wk., in the office of Mr. Stone, contractor, Washington St. Allowed to keep half of pay, and no questions were asked as to how she spent it; stepfather buying her clothes. Left work suddenly after being there only a month, and her mother and stepfather searched everywhere for her; did not find her for 2 weeks; when they came upon her with a young fellow at a neighboring beach. They took her back home and she only stayed three weeks; would never give any account of her absence; admitted she had been bad. Got another job but disappeared in the same manner after two wks. Was away two mos. this time. They next heard of her in Ct. on charge of Forn. Took her home again, where she stayed for next 8 mos. Behaved very well, only going out with mother to pictures and theatres. Left suddenly one night after family had gone to bed and was not heard from again until comm. to Sherborn. So called uncle of whom M. speaks is no relation to her.

Impressions of mother—An unemotional literal person, whose affection is determined by her daughter's actions. Very well dressed and a woman evidently of considerable ability.

Character of home—An 8-room comfortably furnished house—excellent locality. A number of good books and magazines lying around; also a piano.

2. Stepfather. City Market, Lynn. Aug. 15, 1914.

Girl has been hard to control although everything has been done for her; unwilling to give her another trial in the home as she is disgracing them.

Impressions of stepfa.—Prosperous looking man, who has been well disposed to the girl and now feels that his patience is at an end.

### B. Employers.

1. Mr. H. S. Stone, Contractor, 664 Washington St., Lynn, Mar. 15, 1914. Mary Rice earned \$5 a wk. as office girl. Quality of work—fair. Would have been promoted as efficiency increased. Worked 2 mo., left without notice. Under no condition would she be taken back.

Sampson & Co., Publishers, 35 B'way, Chelsea, Mar. 15, 1914. Have no record of such a party on pay roll.

### C. Probation and Police Officers.

1. Probation Officer, Keefe, Lynn, Mass., Jan. 25, 1914. Mary's prob. was unsatisfactory. She reported only twice, and apparently thought it didn't amount to much. Knows little about her. Is willing to co-operate at the time of her parole but has little expectation of her success.

### D. Clergymen, Social Workers and Others Interested.

1. Rev. Mr. Thayer, Rector St. Ann's Church, Lynn, Mass., Mar. 15, 1914. Has known Mary for yrs. She is known as untruthful.

## PAROLE RECORD

dishonest, and deceitful. Has caused her mother, a woman of fine character, untold sorrow. Every means of helping her has been tried and apparently failed.

2. Miss Lewis, Pitt's Grammar School, Lynn, March. 15, 1914. Mary was a good scholar in all subjects, and gave promise of being an unusually capable girl.
3. Mr. Henry Jones, Prin. Lynn High School, Lynn, Mar. 15, 1914. Mary's work was good the first two yrs., but grew steadily worse after that. She left during her junior yr. Would not have been promoted if she had continued.
4. Miss Louise Ross, English Teacher, High School, Lynn, Mar. 15, 1914. Mary became acquainted with a bad crowd of girls at school and then lost interest in her work at school; she could have done well if she had cared to. Her mother is a fine woman, well known in the community. She did everything possible for Mary, who only is to blame.

### VII. Parole Resources.

- A. There is no possibility of her being placed in the home, so she will have to be placed from the institution.

## PAROLE RECORD.

### I. Identifying Data:

Name, Bessie Field; age, 43; color, white; date of birth, Oct. 12, 1871; place of birth, Machias, Maine.

### II. Reason for Desiring Parole, Oct. 30, 1914:

"I want to go out and go to work."

### III. Data from Court:

#### A. Immediate Court History—

1. Charge—Drunk.
2. Plea—Guilty.
3. Court—Middlesex, 3rd Eastern Dist.
4. Judge—Maxwell.
5. Date of Commitment—March 8, 1914.
6. April 30, 1897—Drunk; 4 mos. Deer Island.
7. Expiration of sentence—March 7, 1915.

#### B. Previous Court History—

1. Oct. 18, 1893—Drunk. Released.
2. Dec. 20, 1893—Drunk; 6 mos. H. of C.
3. Aug. 27, 1894—A. & B.; \$5.00.
4. May 11, 1895—Drunk. Released.
5. May 18, 1897—Drunk; 2 mos. Deer Island.
6. April 30, 1898—Drunk; 4 mos. Deer Island.
7. April 30, 1898—Drunk; 4 mos. Deer Island.
8. Sept. 14, 1898—Drunk; 6 mos. Jail.
9. March 13, 1899—Drunk; 6 mos. Mass. Home.
10. Sept. 23, 1899—Drunk; 6 mos. Jail.
11. April 21, 1900—Drunk; 6 mos. H. of C.
12. Oct. 27, 1900—Drunk; Probation.
13. Dec. 31, 1900—Drunk; Sher.
14. Nov. 15, 1901—Drunk; 6 mos. H. of C.
15. June 5, 1902—Drunk; 6 mos. Deer Island ap.
16. March 25, 1903—Drunk; 1 mo. Deer Island.
17. June 25, 1903—Drunk; 1 mo. H. of C.
18. July 31, 1903—Drunk; 2 mos. H. of C.
19. Nov. 1, 1903—Drunk; 3 mos. H. of C.
20. March 14, 1904—Drunk; 6 mos. H. of C.
21. Sept. 18, 1904—Drunk; 4 mo. H. of C.
22. Feb. 27, 1905—Drunk; State Farm.
23. June 21, 1905—Drunk. On file. Ret'd to State Farm.
24. Oct. 21, 1905—Drunk. On file. Ret'd to State Farm.

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25. March 26, 1906—Drunk; State Farm.
26. July 5, 1906—Drunk. Ref'd to State Farm.
27. May 8, 1907—Drunk; 1 mo. H. of C.
28. June 15, 1907—Drunk; State Farm.
29. Sept. 17, 1907—Drunk. Prob. H. G. S., 6 mos.
30. June 26, 1908—Drunk. On file.
31. July 18, 1908—Drunk; State Farm.
32. Oct. 26, 1908—Drunk; State Farm.
33. March 25, 1909—Drunk. Prob. H. G. S., 1 yr.
34. Jan. 14, 1911—Drunk. Rel. by P. O.
35. Jan. 21, 1911—Drunk; 2 mos. H. of C.
36. July 19, 1911—Drunk; 1 mo. H. of C.
37. Sept. 14, 1911—Drunk. Prob. H. G. S.
38. March 23, 1912—Fornication; \$20.
39. May 15, 1912—Drunk; 1 mo. H. of C.
40. July 6, 1912—Drunk; State Farm.
41. Oct. 14, 1912—Drunk; State Farm.
42. Feb. 27, 1913—Drunk; State Farm.
43. Aug. 4, 1913—Drunk; 1 mo. H. of C.
44. Sept. 24, 1913—Drunk; 1 mo. H. of C.
45. March 8, 1914—Drunk. Dedham Ct. 3 mos. Jail.

### IV. Data from Inmate:

#### A. Family History—

1. Father—Robt. Goodie, Died 16 yrs. ago of Tb., Scotch descent. Born in Maine, Meth., Read and write, Ship's carpenter.
2. Mother—Jane Andrews, Machias, Maine, Scotch descent, Born in P. E. I., R. C., Read and write.
3. Fraternity—
  - a. John, 56, (s), Carlton, Ohio, Prot., Cement finisher, Edu.—High Sch.
  - b. Hugh, 52, (m), Machias, Me., Plumber, Edu., Gram. Schl. Prot.
  - c. Phillip, 45, (m), Machias, Me., Prot. Roofer & Slater, Read and write.
  - d. Bessie, (w), Subject of record.
  - e. Alice, 41, (m), Pete Wade, Machias, Me., Prot., Read and write.
  - f. Susie, 36, (m), Robt. Smith, Machias, Me., Prot., Read and write.
  - g. Mary, 35, (m), Jack French, Newark, N. J., Read and write.
4. Husband—Richard Field, 38, Died 10 yrs. ago of complication of diseases, at Tewksbury, Irish-Amer., Born in Boston, R. C., Read and write. Plumber.
5. Children—
  - a. Jane, 16, With Mat. Grandmoth. Left sch. in 4th gr., 13 yrs. old. Did not do well and played truant.
  - b. Criminal abortion 14 yrs. ago.
  - c. Criminal abortion 11 yrs. ago.
6. Relatives—
  - a. Cousin—Mabel Black, (m), St. Johns, N. B.
  - b. Cousin—Mabel Jones, (m), Maine.
  - c. Husband's Sister—Blanche Cross, (m), 1 Fleet St., Boston.
7. Court Record—No arrests.
8. Habits—Fath. mod. alc., husb. excessively alc.
9. Health—Father died of Tb.

#### B. Personal History—

1. Infancy—When a few yrs. old B. was accidentally hit on the head by an axe which her bro. was swinging. This caused dizzy spells during which dark spots came before her eyes.
2. Childhood—Her home was quite a distance from the town and was not very good. There were four rooms, a kitchen and three bedrooms. B. and her two sisters had one, her moth. and fath. another, and the three bros. the third. They were always allowed to do as they pleased if they did not quarrel. Attended public sch. from 6 to 15, but parents never forced her to go on acct. of her eyes which bothered her constantly. Had difficulty in sch. in learning. "Could never do arith. but

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can read and write pretty good." Attended St. Andrews R. C. Church and Sunday Sch. and was confirmed when 11. Always had plenty of good times with her bros. and sisters.

3. Adolescence—After leaving sch. Bessie lived at home with her moth. and helped her around the house. Her fath. came to Mass. and settled in Cambridge. She was 20 when her moth. and the rest of the fam. joined him. After coming to Mass. never went to confession or attended church service.
4. Adult Life—She met her husb. through her bros. and was marr. to him in Cambridge May 1895 by a priest, after a year's acquaintance. They went to live with her moth. as B. could not bear to be separated from her. The first child was born after 15 mos.
5. Delinquencies—

3. First Offence—A yr. later became pregnant again but did not want to be tied down with children so went to a German doctor whom she had heard of through other women, when she was about 3 mos. along. He gave her treatment and told her to come again in a week. These treatments proved to be successful, bringing on a miscar. for which she paid him \$10. Her husb. did not know anything about it until after it was over with.

- b. Subsequent Offences and Reactions—Became pregnant the third time about 2 yrs. later and on this occasion went to Dr. Smith on Race St. He gave her the same treatment and she paid him \$10 also.

- c. Arrests and Sentences—Her first arr. was five yrs. ago when she was sentenced to H. G. S. for 6 mos. Since that time she has served 4 other sentences besides being on probation in Cambridge. Cannot remember much about her arrests.

- d. History of Present Commitment—B. never did a day's work in her life; after her marriage used to go around visiting her husband's people who lived near Boston. An aunt of his would make "mull" by putting a hot poker into a mug of beer. At first she did not like this drink but finally grew to like it so well that she wanted to go there often. Her husb. died after they had been marr. 7 yrs. and she continued to live with her moth. and bros. who supported her. She would get a few cents from her bro. John and could occasionally sneak beer into the house, never dared to do it openly. Would go to see her bro. Philip and his wife would buy liquor for her. She could also drink with her sister-in-law, Mrs. Cross. B. says that after a few drinks "she is off but always imagines she can find her way home." Went to Norwood with a friend May Dolan, who lived there. They were both "pretty full. I do not know where I lost her but I do not think she was arr." The officer who arr. Bessie said that as the last car had gone he would be obliged to keep her. At that time she was on prob. from the Cambridge Ct. and after being held in Needham Jail for 2 days she was comm. to Sher. Denies being immoral. Takes snuff occasionally but never drank in cafes or bad places, always with her friends.

6. Attitude—Doesn't know why she drinks but is sure if she is given a chance she will never touch it again.

### V. Data from Officers of Institution:

- A. Report of Receiving Matron, Mar. 8, 1914—Clothes extremely dirty; vermin in head; tried to smuggle in snuff, very sociable, just recovering from a spree.

### B. Report of Physician—

#### 1. Medical—

- (a) 3-11-'14. On Ent. Wt. 153 lbs. Gen'l con. fair.
- 3-27-'14. Wasserman reaction for syphilis doubtful.
- (b) 7-29-'14. Pres. Cond. Improved. Wt. 165 lbs. The only clinic evidence of syphilis has been vague pains, which have been worse at night.



## REPORT OF PAROLE AGENT

2. Mental—Acc. to Binet see in under 10 yrs. Was at Pub. Sch. in Machias, Me. from 10th to 14th yr. Her head was hurt when she was 4 yrs. and she had such bad headaches subsequently that she did not go to sch. until 10; when she went to sch. played truant most of the time. Gen'l infor. poor. Her educational advantages have been very poor: the results are poor. The test shows some irreg. In spite of the fact that she did Dr. Fernald's test quickly and correctly and gave her answers quickly to most of the questions, from the majority of the other tests she would appear to be very dull, prob. subnormal.
  - C. Industrial Report (Laundry) Sept. 1, 1914—B. was given laundry work because she is a strong woman, capable of hard work and needs an outlet of this kind for her super-abundant energy. In this case there appears to be no indication or necessity of outdoor work in spite of her alcoholism. Work requiring concentration indoors seems preferable.
  - D. Educational Report. (Teacher) Sept. 1, 1914—Because unable to do active mental work due to age and mentality B. has been given the simplest kinds of reading under instruction, in an endeavor to stimulate her interest and use the small amount of knowledge she gained in sch. Has been partially interested.
  - E. Social Report (Deputy) Sept. 1, 1914—B. has been faithful in her work and given little trouble.
  - F. Superintendent's Impression, Sept. 1, 1914—Kindly old soul, vague about herself and her past, convinced that her age entitles her to "shift for herself" in the future. "Always has looked out for herself."
- VI. Data from Outside Agencies and Individuals:
- A. Family and Relatives—1. Mrs. Blanche Cross, 1 Fleet St., Boston, May 1, 1914. (Sister-in-law.) Has not seen Bessie for yrs. She has good people in Maine and N. B. Has feared B. would look her up and Mr. Cross would not allow her to come to the house. Mrs. C. herself has done wrong and was sent to Bridgewater but is trying to keep away from bad associates. B. would be a bad influence. Denies teaching B. to drink. Wishes she would get a place to work in the country. (Impressions)—A dissipated looking woman apparently incapable of assuming responsibility.
  - B. Probation and Police Officers—
    1. Prob. Officer Jones, Cambridge, March 21, 1914.  
Sent a long Ct. rec. with a statement that no further comment is needed.
- VII. Parole Resources:  
None.

**Report of Parole Agent Kansas Industrial School.**—The following letter is prefixed to the report of the Parole Agent found in the 1914 report of the Industrial School for Boys at Topeka:

*Dr. H. W. Charles, Superintendent:*

Sir—"Your parole agent has the following brief report to submit. During the biennial period 282 boys were paroled from the school, of which number 36 were returned for violation of parole. It has been the policy of your parole agent to extend every possible chance to the boy on parole to make good, and return him to the school only as a last resort.

"It has become necessary in rare instances to admonish the local officials where there is a disposition to remove from the community a boy who if properly looked after would respond to the efforts made for his reclamation.

"Since assuming the office of parole agent, on July 1, 1913, 168 boys have been paroled. Of this number four boys have been returned to the institution for violating the parole agreement.

"The duties and opportunities of a parole agent of an institution of this character are many and interesting. He has to do with social and economic conditions that affect the welfare of our country. The delinquent boy, as a rule, is the product of evil social conditions. While he can not solve the problem, he can assist mightily in spreading information on the question and thereby create a public thirst for better things. A parole agent must, in a way, become a

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prophet; not one who foretells events, but one who speaks plainly with respect to present home conditions. Out of disordered homes flows our stream of juvenile delinquents. The home has lost its charm for the boy, if it ever had any charm for him. He would rather hobnob with loafers on the street corners or hang around pool halls or wander down back alleys than stay in such a home. To force him to do so makes him incorrigible. In several instances studies have been made of extreme cases of social degeneracy.

"It has been the custom to interest local organizations, such as women's clubs, church committees, welfare leagues, etc., in the boy who is returning home on parole.

"To parole a boy to the home out of which he came is too often like taking him out of a mudhole, cleaning him up, and then throwing him back into the same mudhole."

Respectfully,

H. J. CORWIN, *Parole Agent.*

**Applications for Pardon Refused.**—The pardon board of the state of Louisiana, through Attorney General Pleasant, announced recently it had refused all applications for pardon presented at the three days' session a short time ago.

It gave as its reason for the wholesale refusal of applications the fact that the board of control of the penitentiary was given the right of parole in a law passed at the last session of the legislature and the board believes this body is best fitted to handle the situation.

"When they are pardoned with too much readiness," states the board in its report, "it is possible that the convict will consider pardons are easy to get through influential friends and will run the chance of committing another crime and being freed again either by the grand jury, the petit jury or the board of pardons."

The report of the Pardon Board says:

"The board of pardons felt that there were many of the cases refused which might commend themselves for parole. The last legislature passed a parole law, making the board of control of the state penitentiary the parole board. This board will soon be ready to receive applications for parole. A person who is liberated under the parole law will be required to make certain periodical reports to the sheriff of his parish, and he must continue to be a good citizen during the remainder of the unexpired term of his sentence, otherwise he may be returned to the penitentiary and be compelled to serve out the remainder of the sentence.

"This parole law will have a beneficial effect because of its restraining influence. A person who is forced to be a good citizen while on parole will find that it is to his best interest to live a life free from crime; he will get the habit of being a good citizen and both he and society will benefit therefrom. When they are pardoned with too much readiness and without a sense of justice to society as well as to the unfortunate convict, it is possible that he will consider that pardons are easy to get through influential friends and will run the chance of committing another crime and being freed again either by the grand jury, the petit jury or the board of pardons. It has also been found that a too free exercise of the pardoning power stimulates those who are viciously inclined to the commission of deeds upon which they are intent, as they feel that influence with the powers that be can either keep them out of prison or get them out of prison."

R. H. G.

## PENOLOGY.

**Prison Reform in North Dakota.**—Progress in the management of the penitentiary of North Dakota has been fairly continuous from the early days of whipping post and repression to the present regime of modern methods. The most conspicuous reform in recent times has been the abolition of the harsh military discipline, and the development of a system based simply on the laws of the state, with as much personal and individual direc-

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tion as possible, and with the usual grading and honor features. The present status of the institution, in at least its most salient features, may perhaps be judged from the following brief description, based upon the observations and interviews of a recent visit.

The penitentiary has at present about 225 inmates, of whom only three or four are women. The principal industries are the twine factory and the brickyard, the latter being outside the prison walls. During the summer months the twine plant has been in operation continuously, and has supplied a considerable proportion of the twine sold to the farmers of the state. A limited amount of farming and gardening is also engaged in. Other industries, such as painting, carpentering, blacksmithing, tailoring, etc., are maintained merely to supply the needs of the institution, and do not serve except to a limited extent as a means of specific industrial training. It may be said at the outset that it is in connection with its industries that the penitentiary falls the farthest short of the ideal, and it will doubtless be a long time before any fundamental change can be made. A large amount of money is invested in the present industrial equipment, particularly in the twine plant—a condition that precludes any sudden change. Yet, since the majority of convicts are without any skilled occupation, industrial training in trades that could be engaged in later on the outside of the walls would be an important means of reformation. The needs in this direction are, however, keenly felt by the management, and everything that can be done with the means at command is being done. No fundamental change can be made until the people of the state, including their representatives in the Legislature, come to look upon the penitentiary as an instrument of reformation and not primarily as a possible source of revenue. Unfortunately, in an agricultural state there is little general appreciation of the problem of dealing with the criminal, while there is an abnormal sensitiveness to slight changes in the tax rate; hence it is too much to hope that any great change in the basic industries of the prison will be effected in the near future.

The buildings and equipment, which are fairly modern, are at present more than adequate for the prison population. The latest built cell-house, in which more than half of the men are housed, has cells of approximately 600 cubic feet, each containing lavatory and closet with running water, and with only one occupant to the cell. The ventilation is good except for the upper tier, and here the defect will soon be remedied. In the old cell-house the cells are a little smaller, and are provided with the well-known iron bucket for sanitary purposes. The place is kept clean, though, as is usual, the extermination of vermin constitutes a problem. In cells where the occupants co-operate, however, the problem is readily solved by burning out the crannies in the brick walls with a gasoline torch. Experiments are to be made to see if the cells cannot be rendered practically vermin-proof.

The kitchen has lately been remodeled and is now commodious and well-equipped. Supplies are purchased in large quantities by the Board of Control, the pure food department of the state co-operating in maintaining standards. The writer ate several meals with the men and found the food well cooked and of sufficient variety. The men are not limited as to the

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amount eaten. The meals are rendered more pleasurable by the fact that conversation is allowed, as it is also in the shops and cell-house. About the only difference between the food served to the men and that put before laborers in the homes of the better class of farmers is that in the former case butter and sugar are not served at the meals. The cost of the provisions used comes to about eight cents a meal for each man, including officers. The following is a typical bill of fare:

Breakfast—Corn meal mush, milk, boiled eggs, fried potatoes, bread, syrup, coffee.

Dinner—Pea soup, salmon, boiled potatoes, gravy, creamed onions, bread, cottage pudding with lemon sauce, coffee, milk.

Supper—Fried liver gravy, fried potatoes, corn bread, fruit, syrup, tea, milk.

Provision is made for recreation and to some extent for schooling. Baseball is encouraged during the summer months. There is opportunity for practice two evenings a week, and a game is played with an outside team nearly every Sunday afternoon. For winter entertainment there is an ample auditorium, equipped with a moving picture machine installed by the convicts, and with a stage and stage settings. An orchestra is maintained by the men. A debating society also holds regular meetings except during the warm weather. At times visiting singers, actors or other entertainers are induced to appear on the prison stage. Religious instruction is provided for by a service once a week at which attendance is voluntary and without guards. The prison library is well supplied with a good selection of books. About three-quarters of the prisoners avail themselves of its privileges, drawing an average of more than one book a week each, two-thirds of the books drawn being fiction. School instruction has not been given adequate attention of late, owing to the difficulty in getting instructors. The state makes no provision for schooling, but the management organized such classes as are possible under the instruction of inmates. In general, illiterates have availed themselves eagerly of the opportunity thus afforded to learn to read and write.

There is no serious criticism that can be made against the working conditions except the general one already noted. It may be added, however, that greater opportunity for industrial training might be found for the women convicts, who are so few in number that they have been given little attention. There is at present scarcely anything more for them to do than to sweep and clean. Among the men the hours of labor are ten a day, with early closing on Saturday, and, of course, Sundays free, except for a limited amount of necessary labor. It has been very common, however, to work overtime in the twine industry, but the men are paid extra for this at a fair rate. For the regular work they receive an allowance of fifteen cents a day. While this is liberal compared with what is usual elsewhere, it is to be hoped that eventually it may be substantially raised, at least for men who have families dependent upon them. Earnings are credited to the accounts of the men at the office, and may be drawn upon for any ordinary purchases on the monthly order day. The clothing furnished the men is well adapted to their needs, nor is it designed to humiliate them as were the stripes of former days. Suits are of tan khaki for

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summer and of gray wool for colder weather. Recently an improvement was made in the shoes furnished, which are now of a pliable leather and very comfortable. Though the three-grade system is in use, a man's rank is not indicated by his clothes, but in accordance with the usual custom it affects the privileges he enjoys.

The sanitary conditions of the work are in general good. A part of the twine factory is objectionable because of noise and dust, but here the men are shifted if their lungs seem to be affected. The factory building is somewhat of a menace from the standpoint of fire, as the material used is oily and the floors have become oil-soaked. If a fire should start it would envelop the entire structure very quickly. The danger to life is not, however, serious; the building is only two stories high and has several exits which are always open during working hours. There has been some talk of removing the danger by installing a safety sprinkling device, which could be paid for by the reduction in the insurance.

A point of criticism well known to the management is the hospital building, which was built some years ago at a considerable expense, but was not well planned. It provides for no adequate isolation of cases, nor has it the necessary equipment for surgical work. As there are usually not more than two or three hospital cases to care for at a time, a smaller building would have met every need. Such a building, equipped in modern style, could have been erected for less than the actual outlay. It is likely that the next Legislature will authorize the tearing down of the present building, as no other use can be found for it, and will provide for the erection of such a hospital as is required. There is also need of a more liberal provision for the expense of surgical operations and for dental work, both of which must ordinarily be paid for by the men. Recently the cost of two difficult operations which restored to health two promising men was generously met by the governor from funds set aside for his own expenses, but the state should not leave such matters to philanthropy.

The burden of discipline has been materially decreased by the reasonable freedom accorded the men, and by the good treatment in general that they receive. Fights among them are now infrequent, occurring on an average not more than once a month, whereas at one time they were of daily occurrence. The only guards now armed with rifles are two in the towers; the guards directly in charge of the men carry only heavy canes. With respect to the salaries paid to these guards and other officers, the state has been niggardly. The task of handling convicts is a difficult one, requiring tact and skill; physique is no longer the sole requisite. While the penitentiary has in general been fortunate in its selection of employes, the future would be safer if the wages paid were such as to insure competence.

To judge from cases that come before the parole board, and from the experiences of the management, it is evident that the state might profitably invest more money in the parole system. This system cannot, however, be carried on successfully without ample supervision of the men on parole. The state has an indeterminate and suspended sentence law, and allows paroles to be granted after the expiration of one year in prison, less some deduction for good behavior. There are inmates who might better

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have been spared the humiliation of the prison—whose reformation would have been much surer outside the prison walls under proper supervision than within them.

There is also a crying need for legal officers in the pay of the state to take up in some systematic way the legal aspects of the convict's case from the convict's point of view. The usual perfunctory appointment of an attorney for the defense in case of poverty is often inadequate. Besides, there are legal questions that arise after imprisonment that may materially affect the just treatment of the convict. The state should be as anxious to see that the rights of the convict are safeguarded as to see that society is defended against the criminal; not a maximum of punishment, but exact justice, should be the aim. So far as the men in the penitentiary are concerned, the matter might be solved, as some have suggested, by the appointment of a deputy attorney general whose duty it should be to look after the legal interests of the convicts and to act as their adviser. As to conditions preceding the serving of the sentence, perhaps the appointment of a regular counsel for the defense in the district courts is not feasible as yet, but at least something might be done to prevent state's attorneys from using unfair means to secure convictions, as they sometimes do in an effort to make a showing for re-election. It is said to be a somewhat common practice for a state's attorney to induce an accused man to plead guilty of a charge whose real import has been misrepresented to him, and of which he may not be guilty in the degree charged, or possibly not at all. It is represented to him that by pleading guilty he will receive a light sentence, which will be preferable to awaiting a slow trial in the county jail, with the possible outcome of a heavy sentence. Having pleaded guilty, he suddenly finds himself facing a long term of imprisonment. Later, when he applies for a parole there is no court record from which perhaps extenuating circumstances might have been shown, but only an apparently frank admission of guilt. Such deceitful methods of dealing with the accused are disgraceful, and result in the making of a criminal out of one who might perhaps have easily been reclaimed from his waywardness.

To sum up it may be said that the administration of the penitentiary of North Dakota is at present enlightened and humane, and is in all essentials fully up to modern standards, within the limits set by the public opinion of the state. The warden, Mr. F. S. Talcott, is a man of broad education and experience. His policy of meeting the men individually and listening to their complaints has greatly extended his influence over them. To the writer the reality of this influence was very apparent when, on the occasion of his recent visit, he was given an opportunity to talk freely and confidentially with the prisoners. Personal understanding and sympathy from one who is respected can do more to effect a reformation than the most extreme severity. As has already been said, the possibilities for the future progress of the institution depend primarily upon the enlightenment and liberality of the electorate of the state.

## PRISON REFORM

The following statistics are appended. They are taken from the biennial report about to be published:

Convicts received during the two-year period ending June 30, 1914.... 292

Nativity:	Per Cent.
American .....	72
Canadian .....	6
Scandinavian .....	6
German .....	4
Russian .....	4
Fifteen other nationalities...	8

Age at time of committal:	
Under 20 .....	10
20 to 30, inclusive.....	50
31 to 45, inclusive.....	29
46 to 66, inclusive.....	11

Sex and race:	
Female white .....	1
Male white .....	89
Male negro .....	6
Male Indian .....	3
Female Indian .....	1

Residence:	
Residents of N. Dak.....	56
Non-residents .....	44

Former occupation:	
Laborers .....	37
Farmers .....	34
Engineers .....	5
Machinists .....	4
Painters .....	4
Forty-four other occupations	16

Religious training:	
Protestants .....	52
Catholics .....	31½
None .....	16½
Protestants include:	
Lutherans .....	18
Methodists .....	7½
Baptists .....	6½
Presbyterians .....	4½
Twelve other sects.....	15½

Habits:	
Temperate .....	30
Intemperate .....	70
Non-users of tobacco.....	12
Users of tobacco.....	88

## CONVICT LABOR

### Summary for two-year period:

	Inmates
Received .....	292
Pardoned .....	25
Paroled .....	33
Deaths .....	2
Discharged .....	180
Escaped .....	10
Recaptured .....	6

Failure of paroles and suspended sentences, about 4 per cent of all cases so treated.

About one-third of inmates received name no relative or friend for notification in case of death.

The crimes for which sentence is being served are various and difficult to classify. Assault and burglary, in various forms, predominate. Sex crimes, like rape, incest and adultery, are surprisingly numerous, constituting 16 per cent. "Bootlegging" accounts for 15 per cent.

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**Good Roads and Convict Labor.**—The January number of the *Proceedings of the Academy of Political Science* is devoted to a discussion of this subject. It is of interest to two classes of students, because it is approached from two standpoints—from that of the prison reformer and from that of the people who are endeavoring to secure better roads.

The order of the terms used in the title of the pamphlet indicates that the promotion of the Good Roads movement is the first object sought. But the expense involved in dealing with him. To call this "a form of slavery" is to "foreword" of Mr. Charles Henry Davis, president of the National Highways Commission, is devoted largely to a denunciation of the existing prison system, couched in terms which make no discrimination between the prisons and prison methods of different states and different localities, conveying the idea that the country has one system, and that it deserves an unqualified condemnation, which he deals out in superlatives.

He declares that "Our modern prisons are barbaric. They typify the medieval prisons, so loathsome to our imagination, and yet we call them modern. They are not. They still hold men in abject slavery, in idleness worse than death. Without sun. Sometimes without light. With foul air and fouler companions. . . . We have abolished negro slavery, a paradise compared to that of criminal slavery. We maintain institutions little better than the torture chambers of ancient times," and much more to the same effect.

Apparently he has never heard of reformatories like Elmira and Great Meadow, New York, Huntingdon, Pa., Rahway, N. J., Concord, Mass., Mansfield, O., St. Cloud, Minn., and many other engaged in definitely reformatory work; of the new Minnesota State prison; of the United States penitentiary at Leavenworth and many others possessing the physical qualifications whose absence he laments or of the large number of other penitentiaries which are run upon the reformatory plan, with the purpose of reforming those who pass through



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them. There are prisons which are unfit for human habitation; there are prisons which make no attempt to improve their inmates physically, morally or mentally. But they are in the minority, and when a man characterizes them all by terms which can properly be applied to comparatively few, those who are interested in prison matters will be inclined to question his authority to teach about his other subject—Good Roads.

This doubt is emphasized when we read his appeal for good roads based upon their relation to illiteracy. Briefly, this is his argument: "In the United States there are 18,000,000 children who endeavor to attend school. There are during much of the school term a considerable part of the 2,000,000 miles of our over 30,000,000 who should attend school. Why don't they? Largely because roads is impossible."

Then he presents a table showing that illiteracy among native whites of native parentage is far more prevalent in rural sections, where roads are poor, than in urban sections, where roads are good. Mr. Davis does not make a direct connection between illiteracy and crime, as he might, but it is to be inferred from the drift of his general argument that he believes that good roads would, by reducing illiteracy, reduce crime. This may be true, and probably is, but one can hardly refrain from calling attention to the fact that the percentage of crime to population is far greater in urban communities which have good roads and a literate population than in rural communities which have poor roads and a more illiterate population.

This fact is not an argument against good roads or in favor of illiteracy. It is stated in order that we may not confound coincidences with sequences; that we may not forget that there are many factors in the problems of both illiteracy and crime, and that we may not expect to find in good roads a panacea for all civic ills.

The principal paper is by Sidney Wilmot, B. S. in C. E., who has the right to speak on good roads, and upon the use of the labor of prisoners for their construction. But in his discussion of the prison question he frequently takes positions which those who are in prison work will not accept. His preliminary assertion that under the present system "convicts are the property of the state, to be used as in its wisdom and sovereign authority sees fit," is not recognized as a statement of the underlying principles of penology, and the employment of prisoners, even under the discredited contract system is not, as he calls it, "legalized slavery." In another place Mr. Wilmot says: "Convicts and roads, both being state property, the maximum of efficiency is possible only through joint operation." Such assertions tend to confuse the general reader. There was a time when men convicted of crime were sold into slavery, but it is not true today. The offender is taken into and kept in custody because he is believed to be unfit to be at large. He is made to labor, partly because it is for his interest, and partly that he may be compelled to reimburse the state for a part of the expense involved in dealing with him. To call this a "form of slavery" is to misuse language.

In the discussion of the use of prisoners in road-building, Mr. Wilmot falls into another error. Speaking of the commutation of sentences of those who work on roads, he says that it should not be so large "as to free the prisoner before he has had a chance to pay his debt to the State." This conception of the relation of the prisoner and the state, as that of debtor and creditor, has

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wrought incalculable mischief. The man who has served his sentence considers that he has "squared the account." He does not recognize any demand for a change of character, but merely endures what is inflicted until the sentence is finished. It is a pity that this unsound conception of penal sentences should find a place in such a paper as this, and that one of the leading features of the system of employing prisoners on road work should, to some extent, be based upon the "debt" theory of punishment.

It is plain that the reduction of the term of imprisonment for those who work on roads is vital to the system. It is one of the rewards for doing this particular kind of work. It appeals to his love of liberty. Laws authorizing the commutation of sentences for good behavior have long been in use as a means of securing discipline. They serve a good purpose in that they develop self-control, and substitute it for officer-control.

But that is all it does. It fails to accomplish the great result which should be the main purpose of imprisonment—the change of the character of the prisoner, so that he may be fit to become a free citizen. The worst man at heart in the prison may secure a large reduction of his sentence by working on the roads. But is the fact that he has so worked a reason for releasing upon the community an unreformed criminal?

Of course, it may be said that he will be so released at the end of his sentence. True, and it is an argument against allowing a court to fix in advance the date of the prisoner's return to free life.

These criticisms are not directed at the main purpose and argument of Mr. Davis and Mr. Wilmot, which is to promote the larger use of prisoners in the building of good roads. The force of their arguments for this would possibly have been greater if they had not misconceived the underlying penological principles of the present day, and if they had recognized the great progress which has been made in securing their more general adoption.

The pamphlet contains more information in regard to the use of prisoners in road-building than is easily obtainable elsewhere, and is a very valuable contribution to a subject which is certain to demand constantly increasing attention. This attention is due, not only from those who have the administration of prisoners, and are under obligation to avail themselves of every opportunity for a better use of prisoners, but also from the public. The necessity for an enlightened public opinion in support of the use of prisoners in road-building is very urgent. Its success, and its extension must depend largely upon the development of a public sentiment which shall support the authorities in their work.

Those who are not familiar with the progress made in recent years in this line will be surprised by the extent to which the experiment has been tried. The facts given by Mr. Wilmot are of great interest. Only a brief summary can be given:

In Washington, road-building by prisoners has been tried very thoroughly, and for several years. The work of preparing road material in the stone quarries, has been carried on on a large scale. The actual work on roads is specially noticeable, because in the earlier days it was conducted upon the old penal method, in which restraint was depended upon for preventing escapes. Armed guards were on duty night and day, and a prison stockade was provided for housing. With this provision it was possible to utilize men who could not be trusted under the honor system.

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The main inducement held out to the men seems to have been the hope of pardon. The pardoning power was exercised with great liberality in behalf of those who worked on the road. Not only in Washington, but everywhere, the fact that the work is more congenial to most of the men than is the work within the prison, is a strong incentive to good behavior and industry. They do not wish to be returned to confinement, and work well to avoid it. The Washington experiment was discontinued because of the failure of the legislature to appropriate money for road-building, but the quarries are still operated, the product being sold to private parties.

In Oregon, the work upon roads has been due largely to the action of Gov. West, whose views of the criminal are well known throughout the country, and whose forceful administrative qualities have been shown in the development of this work, almost without affirmative authority of law. Believing as he does in the manhood of men who have committed crime, he went beyond the limit usually thought to be safe in trusting them. It is claimed that the results have justified this course. There have been very few escapes, (fewer than from the closed prison), and fewer than when men were employed outside under armed guards.

California has done some road-making with prisoners, but not enough to make a test of the plan. The legislature does not seem willing to give the experiment a fair chance.

Nevada, where there would seem to be a good opportunity for carrying out the road-building system, has done very little. Wages are paid to those so employed.

In Arizona there has been a large use of prisoners in the construction of state highways and bridges. Very little reliance is placed upon armed guards to prevent escapes or for disciplinary purposes. Unusual privileges are given, and a genuine effort to promote the best interests of the prisoners is very apparent. A very exceptional reduction of the sentences of the men employed on the roads is made, and the hope of release probably accounts for the rareness of escapes and for the success of the undertaking. The financial results are reported to be excellent. The saving to the state is said to be large.

New Mexico has had a larger experience than any other state in using prisoners in road-building, having begun in 1903. The honor system is in use, and nearly all the men respond to the trust imposed in them. The state is entitled to the credit of working out this system somewhat more scientifically than other states. It has the indeterminate sentence law, and men are released on parole under supervision, instead of being turned loose upon the community.

Utah makes some use of prisoners in this work. Dependence for the prevention of escapes is upon armed guards, and as the number of prisoners is comparatively small and the number of guards is large, the cost is large, and the experiment is not successful financially.

The experience of Colorado is an encouraging one. It has used more men than most states, and long enough to test the system, having tried it since 1908, first with armed guards, and since 1909 under the honor system. Several hundred miles of road have been built, and the quality is said to be good. It has been of great advantage in improving the ways of access to some of the scenic wonders of the state. Men are employed in camps, some of which are 300 miles from

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the penitentiary. There are no stockades, and the largest liberty is allowed the men, with the best of results. Breaches of trust are exceptional.

Montana, also, having need of long stretches of new or improved roads, has been building with prisoners for more than three years. They are housed in tents, in camps of from 50 to 100, with only three unarmed guards—two for day and one for night. Men are trusted more than in most states, yet there are very few escapes. This is due in part to the largely increased commutation of sentence allowed to road-building prisoners. The work done is highly satisfactory, and the method has made it possible to build roads which would not have been constructed with free labor.

Kansas has done some work in a comparatively small way. Plans are under consideration for making it a part of a system under which men can earn the privilege of working on roads, towards the end of their sentences, by good conduct in the prison, and have a share of their earnings for themselves or their families.

Oklahoma has tried the experiment successfully without armed guards. The men lived in tents. The main purpose was to keep them busy, rather than to do scientific road-work.

Iowa has a well-considered statute, under which it is trying to solve the problem systematically. The men live in camps, and do the work under the supervision of the highway commission. It is found that they are reliable, and do not take advantage of the very large liberty which is given them. They are to be allowed a part of their earnings.

Michigan is trying the experiment of using county prisoners in road-building. In most other states only penitentiary prisoners are used. Kalamazoo County has done something with short-term men. It pays them a small sum for good work. One of the results has been a reduction in the number of prisoners, especially of vagrants. The same result was noticed in Onondaga County, N. Y. (It is assumed that this means a reduction of crime, especially of vagrancy. A careful study would probably show that the vagrants merely avoided Onondaga County, and went to others, where they were not required to work so hard. Indeed, the report itself shows that the population of the surrounding counties increased.) The use of county prisoners is beset with difficulties. The terms are short, and there is necessarily a constant shifting of men in the replacing of those whose terms expire. Onondaga County housed the men in portable buildings, used elsewhere to some extent.

Ohio has done something, not in a large way, but quite successfully. The men were employed within a few miles of the penitentiary, and were housed there, being carried back and forth by an auto truck.

New Jersey has a statute authorizing the employment of prisoners in road-building. When Mr. Wilmot's paper was prepared there had not been much use of it, but it is expected that more will be done. The payment of a part of the earnings to the prisoner is a part of the plan proposed.

Undoubtedly there have been other states and other counties not mentioned by Mr. Wilmot, which have used prisoners for this work, but the instances noted by him are sufficient to show that road-building by prisoners is no longer an experiment, and that there will be an increase is not to be doubted.

The last twenty pages of the pamphlet are given to a paper by Dr. E. Stagg Whitin on the prison industries of the State of Wisconsin. The problems of

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that state differ in many ways from those of other states, but their discussion by him brings out many things which are deserving of study elsewhere. Dr. Whitin has the advantage of a thorough knowledge of the prisons and prison systems of the country, and many of the principles he lays down for the solution of the Wisconsin problems are universally applicable. One may not agree with him in all his propositions to recognize that he writes intelligently and earnestly, and to the profit of those who read what he has to say.

A few things deserve careful study in the formulation of plans for future work. Perhaps the most noticeable feature of the new method is the place which commutation of sentence has in securing trustworthiness and good work from the prisoner. It is doubtful if success could have been secured without offering the prisoner a large reduction of his sentence. As a reward for good conduct and for industry, as a stimulus, it is very effective, but is it wise to single out for this favor the men employed in a single industry, while those who work in other occupations do not receive it? On the whole, is it wise to buy good conduct and industry at so large a price? The general admission that it is necessary, in order to get good work and to prevent escapes, detracts to some extent, though not materially, from the claims for the "honor system."

The allowance of wages to men employed in this work is also an important feature of the system. Though not yet generally used, there can be no doubt that it is almost essential to the best results. But, as in the matter of commutation of sentence, is it not unfair to allow these men to have a share of their wages, and deny it to those who work equally hard and faithfully, at other things, in the prison? The men who are employed in road-building prefer it, usually, to work inside the walls.

That imprisonment of an offender punishes the wrong person, in many cases, is now generally admitted. A man commits a crime and his wife and children take many of the consequences. Their needs do not depend upon the fact that he is or is not at work on the roads, and the relief of those needs should not depend upon that. The state, for its own purposes, has taken away the bread-winner of the family. If this causes distress, the state should relieve it. It is as much a part of the cost of crime as is the expense of supporting the prisoner, which the state pays whether he works or not. Provision should be made for the relief of distress among the families of all prisoners and the prisoner should be provided with means of re-instatement after his discharge. No partiality should be shown to the road-building prisoner.

It should be noticed that the use of prisoners in road-building is one of the results of the changed conception of the prisoner, and of his treatment. It has been discovered (the discovery is a comparatively recent one), that those who commit crime are men; that the appeal must be to the human side of their natures, rather than to the criminal side; that hope is a stronger motive than fear, and that it is better to direct their attention to the future than to dwell upon the past.

The new conception of the prisoner required a new type of warden. The reports in regard to road-building by prisoners shows that in some cases it has succeeded and in others it has failed. It will probably be found that in most cases the failures have been due to the administration. It frequently happens that the officer in control does not know how to get in touch with the men.

## CRIMINOLOGY

The trust system has two sides—not only must he trust the men, but they must trust him, and some officers cannot secure the confidence of their men.

The "honor" system, in some form, is necessary for the accomplishment of the only proper purpose of imprisonment—the reformation and re-adjustment of the offender. His reformation must be tested before he is discharged. If he cannot be trusted with a very large measure of liberty before he is discharged, certainly he is not fit for release. Outside work should be the last stage in imprisonment, the test of fitness for discharge; the preparation for that event. It will be more effective if done without reward.

Finally, if the principles which underlie the use of prisoners for this work are correct, as I believe they are, they should be applied to all prisoners, the application being such as circumstances and the needs of individual prisoners warrant.

It should follow that the public will come to a new view of the criminal, and finding that he is a man, and has proved in prison that he can be trusted, he should be allowed a chance to prove his manhood on the outside.

## MISCELLANEOUS.

**The "Gun Mob."**—A "mob" is not as the name implies, a noisy, violent tempered gathering, but a gang of pickpockets well financed and equipped for the trials of the road. A mob consists of four or five people who travel together to steal. An inquiry into the formation of mobs, their habits, peculiarities, methods, etc., might prove interesting to the reader who loves to delve into the sociological labyrinths of that portion of the human family known as the "underworld." In America mobs are formed in a variety of ways; as children they may be thrown together by accident; perhaps they are neighbors; they may get acquainted with each other in penal institutions, and be released at about the same time. The working and daily routine of the mob continues until broken up by imprisonment of one or more members, by sickness, or because the locality becomes too hot for them on account of the activity of the police. Betrayals of one another to the police are matters of common occurrence; take, for example, a man arrested charged with larceny from the person. The police have no way of finding out what thieves constitute the personnel of the mob, but they find out through other thieves (jealous, malicious, and anxious to secure favors for themselves from the police). Then after a conviction of the first man caught the police round up the "sucker" and complain of and convict each and every member of the mob. This is done by "snitching" (thieves informing on each other), and it is a common practice among pickpockets. In America a mob will seldom contain more than four or five members; in England from four to twenty. Pocket picking is at a standstill in the northern parts of the United States in the winter time because it is not easy to pick the pockets of people wearing overcoats. This fact accounts for the migrations of thieves southward in the winter time, and the southern climate, being milder, offers a better and more fertile field for depredations. In this respect the "gun" goes southward like the swallow, and the underworld family in its habits resembles those of the feathered tribe. Like the hare, whatever his itinerary, he returns to his home city unless he is prevented and detained by the police authorities. Holding out part of the "swag" is another reason for the splitting up of mobs. Intense rivalry exists between various mobs, and they

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brag and "knock" one another just the same as the rest of humanity. Before they go out to races and fairs they settle beforehand what each shall take, and the location of their "meets." Time is not considered; three in the morning is as convenient to them as midnight. They are punctual in their "meets" and refuse to work with strangers. A failure to keep a "meet" will result in the discharge of the careless thief, and another man will be selected to fill his place. A strange thief must be vouched for and introduced by some one known to both. Wandering about like Arabs, they change the personnel of the mob to fill up gaps caused by imprisonment, sickness, etc., and upon their return perhaps only one of the original five will appear with the returned mob. On the road they "fill" in with other mobs, discharge one another, get "split out" on account of quarrels, betrayals of each other to the police, etc. Their women, too, gossip, and in this way much valuable information gets to the police. They meet each other in their travels on the "road" and give a quiet parting salute and then pass on.

JOSEPH MATTHEW SULLIVAN, Boston.

## REVIEWS AND CRITICISMS.

PSYCHOLOGY OF TESTIMONY AND REPORT. (The following survey is reprinted from the *Psychological Bulletin*, Vol. XI No. 7, July 15, 1914, pp. 245-250.—*Ed.*)

The references to Hegge and Franken are repeated from last year's list because of my inability to review them at that time. Hegge (10)<sup>1</sup> deals with the problem of scoring the picture test, with special reference to the computation of  $P$  (the number of possible items.) For the well-known *Bauernstube* picture Stern selected 76 items, but some observers report 164 items, and Hegge obtained 289 different items from eight observers. Hegge recommends computing  $P$  by this empirical method. He also calls attention to the fact that the several coefficients of report, range, fidelity, etc., calculated for any given test do not have a constant value for the observers, but merely a relative value for the given test, as, for instance, in comparison of sex, age, race, etc. Other analyses are made by Hegge, who shows, for example, that good reporters give more items and hence suffer grater liability of error, but may actually make fewer errors because they are more cautious and critical.

Franken's article (8) is an elaborate extension of his work by the *Methode der Entscheidungs-und Bestimmungsfragen*, already explained (this BULLETIN, 1912). A distinction is made between right and wrong and between true and false answers. Answer to the *Bestimmungsfragen* ("What is the capital of France?") may be right or wrong: answers to the *Entscheidungsfragen* ("Do you know what city is the capital of France?") may be true or false. The following are some of the main conclusions: 1. Those who give many right answers usually also give many wrong, but few false answers. 2. Those who give many false answers usually also give many wrong answers. 3. Range of memory and class standing usually show good agreement. 4. The formal characteristics of memory (range, readiness and fidelity) are as a rule positively co-related. 5. Those persons whose information is of average amount usually exhibit the least truthfulness, whereas those with a small amount of information owe their greater truthfulness to their lack of ambition, while the gifted resist opportunities to false report through their great cautiousness. 6. The well-informed are, as a rule more ambitious, but also more truthful than the poorly informed. Other conclusions refer to the effect of allowing shorter or longer periods for reflection before the answer is demanded.

Dallenbach (5) used the picture test, supplemented by a test of memory for geometrical forms of different sizes, shapes and colors, with 20 college men for the purpose of investigating the effect of various time-intervals (zero, 5, 15 and 45 days of zero, 1, 3 and 6 days) between exposure and report. In general, errors increase with time-interval, rapidly at first, then more gradually: thus, for

<sup>1</sup>Figures in parentheses refer to references at the conclusion of the review.



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one picture, the per cent. of error in the narrative was 10.5, 14.3, 18.0, and 22.4 for intervals of 0, 5, 15 and 45 days, respectively. Dallenbach also found fidelity and certainty positively correlated, regardless of time-interval. In his test with forms, errors were greatest with colors, next with position, next size and lastly shape. Errors were greatest in the green and least in the yellow tones.

An elaborate qualitative analysis of report has been contributed by Schultz (17). The analysis is based upon reports gathered from university students and also from teachers in description of a pre-arranged episode in the classroom of Professor Aall. The following are some of the forces at work in determining the nature of report: (1) What things are noted depend partly on the observer's mental state at the time, partly on the objective complex in which the things occur. (2) Attention is caught by novelty and by the logical significance of the impression. (3) The actual items noted and reported are more extensive than what the observer is aiming to perceive: there is a "spread" of observation outside the main objects of attention. (4) Optimal conditions for report are given when novelty supplies a motive, but familiarity of details affords ease of comprehension. (5) When a strange even interrupts suddenly into a familiar and commonplace setting, a certain amount of time is necessary before attention can be readjusted to the new situation. For this period of readjustment reports are bad. (6) Reports show the presence of perseverative tendencies, enough to make it probable that "perseveration plays an important rôle in the errors of witnesses." Since this tendency decreases with time, it follows that reports given directly after an event need not be the best. (7) Reports are affected by a process of logical elaboration, emphasis of the essential, dropping of the unessential (principle of economy of consciousness). (8) Descriptions of persons tend to fall into more or less preconceived types. (9) Some persons embellish their reports to secure better literary form and may thus distort them unintentionally. (10) Emotion produces decided distortion, especially of verbal items (quotations). (11) Better reports are secured when the reporter believes himself seriously responsible for his statements.

The lecture given by Pick (16) at Vienna is another discussion of the qualitative aspects of the report, but is confined to pathological aspects, such as retrograde amnesia, the erroneous filling of gaps in memory, resistance to attempts to fill in such gaps, false feeling of familiarity or lack of familiarity (cryptamnesia). Pick points out that these phenomena are characteristic of hysteria and other pathological conditions, but that they may also be developed in normal persons under the stress of strong emotion.

Two books testify to the progress made in jurisprudence in assimilating psychological facts and principles. That by Arnold (1), however, can scarcely be said to reflect or embody any of the recent experimental work, as its author apologizes for the inability to read German and makes up in this second edition for his lack of acquaintance with Stern's work by quoting freely from Münsterberg's *Psy-*

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*chology and Crime*. On the other hand, Wigmore's large volume (26) is a work of the first water: he has drawn freely from modern discussions and presents a constructive program for the better training of students of law and other interested in disentangling masses of mixed evidence.<sup>2</sup>

The remaining references can be passed over more briefly. Gross (9), v. Mach (12), v. Beneckendorff and v. Hindenburg (3), Mothes (13) and Türkel (23,24), all are confined to citations of cases or experiences that have come up in their daily work illustrative of this or that feature of the psychology of testimony. Boden (4), Stöhr (19) and Sturm (21,22) have given excellent summaries of those portions of the psychologist's work on testimony of special concern for jurists. These contributions are refreshing examples of the genuine interest taken by some jurists in the scientific examination of testimony, and have the additional merit of setting a number of constructive problems for the psychologist.

Basch (2) gives some account of the errors that appear in testimony relative to nuncupative wills. Näcke (15) points out that the unreliability of the statements of persons who have taken alcohol depends to a great extent upon individual susceptibility as well as upon the absolute amounts consumed. Storch (20) tried the picture test as a means of diagnosing manic and depressive states of insanity and concludes that the method furnishes a useful supplement to the other devices of the alienist. Both types are below normal in spontaneity and range of knowledge: manics are incautious and unreliable, but depressives are cautious and reliable. V. Kármán (11) protests against the low rating given by many psychologists to the testimony of children, and agrees with Gross that under some circumstances they are quite valuable witnesses. Winch (27) reports briefly upon experiments with English school children by the aid of the regulation picture test. Fiore (6,7) has taken up the psychology of testimony in Italy: his general review summarizes the contributions made in that country since 1906. Münsterberg (14) had students

<sup>2</sup>See Professor Whipple's review of Dean Wigmore's book in this Journal Vol. V. No. 2, July 1914, pp. 316 and 317.

estimate which of two cards had the greater number of spots on it, and then revise their estimates after a discussion of their opinions. He claims that such a test presents a good counterpart of the situation facing a jury and that the fact that his men students voted more nearly right after the discussions substantiates the general faith in the value of jury trials. Unfortunately for the other sex, his experiments showed that women were unconvinced by such discussions, whence he argues that there exists a sex difference that "makes men fit and women unfit for the task that society requires from jurymen." Weber's lecture before a pedagogical society at Chemnitz (25) shows the relation between pathological and normal lying, with special reference to the transition between the two. He believes that truthfulness has to be developed in every child, that parents must avoid getting children into situations that incite to lying and by continued training gradually develop a respect for truth.

## REVIEWS AND CRITICISMS

For a more extended and critical survey of the work in the field of testimony during the years 1911-1913 the reader should consult the valuable general review of Stern (18).

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## REVIEWS AND CRITICISMS

DER UNGARISCHE ENTWURF UBER DIE UNVERBESSERLICHEN VERBRECHER, Von Dr. jur Erwin Hacker, Sonderabdruck aus der Monatschrift für Kriminal-psychologie und Strafrechtsreform, Juli 1914.

DAS UNGARISCHE GESETZ UBER DIE GEMEINGEFÄHRLICHEN ARBEITS-SCHUEUEN (Gestez, Artikel XXI von 1913), mitgeteilt von Dr. E. Hacker, Sonderabdruck aus den Blättern für Gefängniskunde, 1914.

These two articles bring to our attention recent legislation of Hungary which reveals the influence of modern ideas in radical form. The influence of American ideas is not mentioned but it is manifest. When these laws come into effect, Hungary will have some of the best elements of our indeterminate sentence and parole laws. The "work-shy" will find himself in a workhouse acquiring skill and industrious habits for an indefinite period, but not to exceed five years. The insane are carefully excluded from this group. Not the degree of guilt of the act but the dangerous character of the actor becomes the decisive consideration. A parole board is to be connected with each workhouse. The period of conditional release is one year. The convict who breaks his parole can be returned for cause, but only by a court, and the police keep him under surveillance,—a serious defect.

The bill relating to incorrigible convicts rests on the same advanced principles. The Hungarian criminal code was formed on a "classical" basis in 1878, but in 1908 and 1913 steps were taken to bring it up to date, and while awaiting a complete reform this partial measure has been introduced. The juvenile delinquents have already been brought under a rational procedure and the administration of child saving work is well organized. Hungary has a vigorous group of reformers who are making themselves heard and felt.

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C. R. HENDERSON.

DER ENTWURF EINES DEUTSCHEN STRAFGESETZBUCHES. Nach den Beschlüssen der Strafrechtskommission systematisch Bearbeitet von Dr. L. Ebermayer, Reichsgerichtsrat, stellvertreter-Vorsitzenden der Strafrechtskommission. Berlin, Verlag von Otto Liebmann, 1914.

DIE POSTULATE DER INTERNATIONALEN KRIMINALISTISCHEN VEREINIGUNG UND DIE BESCHLÜSSE ZWEIER STRAFRECHTSKOMMISSIONEN. *Mitteilungen der Internationalen Kriminalistischen Vereinigung*, Bd. xxi, Heft I, 1914.

When any great nation undertakes such a piece of house-cleaning as the reform of her system of penal law, she merits the respectful attention of us all, whether lawyers, criminalists, or laymen. This job Germany has undertaken. After twenty-five years of persistent scientific study and educational propaganda on the part of the Internationale Kriminalistische Vereinigung, and, on top of that, two Imperial Commissions sitting some six years, the fruitage appears in the shape of a detailed project of law covering a very large area of penal law. Dr. L. Ebermayer, vice-president of the last *Strafrechtskommission*, has recently published a summary of the findings and conclusions of

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the Commission. In his abstract of the Commission's work, which is most carefully and methodically done, the final decisions of the Commission are compared with those of the preceding larger body whose conclusions and recommendations were recorded in the so-called *Vorentwurf*, published in 1909. In some respects the *Vorentwurf* was narrower and less progressive in tendency than the *Entwurf* which is to furnish the basis for proposed legislation. Both, however, rest to no small extent upon the work of the *I. K. V.*, and particularly its crystallization in the great sixteen volume compilation on comparative criminal law issued co-operatively by Kahl, von Liszt, Wachs and other scholars. Dr. Ebermayer's analysis of the *Entwurf* gains historical perspective when read in conjunction with an article by his colleague on the Commission, Dr. Karl Meyer, published in the *Festband* of the *I. K. V.* early in 1914.

After going through these two studies from this standpoint I find perhaps ten or a dozen distinct lines of reform in the *Entwurf*, (Draft Code,) showing pretty clearly the influence of the *I. K. V.* and its teaching. The Union throughout its history has steered clear of affiliations with any one criminological sect or party. And Dr. Meyer is careful to point out that the Commission likewise has avoided such special alliances. The new German code will exploit no particular "school;" but it is not therefore necessarily eclectic, nor a mere hash-work of compromise. In every case the Commission applied the touchstone of "practical necessity." The fact that it adopted in so many words the *I. K. V.*'s classification of criminals, particularly that part which refers to habitual and incorrigible criminals, is no exception to its general rule; for the *I. K. V.* itself includes criminalists of widely divergent ideas; this classification represents ground common to all. The attempt to find some satisfactory practical and legal concept of responsibility not tied up with the old free-will controversy, indicates also the hand of the Union. Other evidence crops out in the emphasis the Commission lays on measures for juvenile delinquents, for preventive measures in general, for probation, rehabilitation of criminals, enlarged discretionary powers of judges, and special institutions for the inebriate or the mentally defective criminal. Finally, the *Entwurf* in its cautious but sure approach in the direction of a general indeterminate sentence shows needs of the Union's sowing. Parenthetically let us say that sentiment in favor of the indeterminate sentence is growing steadily if slowly throughout Germany. The superintendent of the famous Brauweiler Workhouse near Cologne confessed to me last summer that he was an optimist, and for that reason was sure his country would be thoroughly converted to the indeterminate sentence in fifty years! To anthropologists half a century is but a fragment of a second of cosmic time. Hence it would have been too much to expect these commissions to come out radically for such a reform so early in the day.

The *Entwurf* is rather a formidable document of 428 paragraphs, systematically arranged in two books; the first covers serious crimes and delictions; the second, minor offenses. This division of subject

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follows the general tendency to separate the criminal from the police code. Dr. Ebermayer's analysis goes through the *Entwurf* paragraph by paragraph, pointing out the details in which the proposed revision differs from the code now in force. It is not our intention to follow him in minute detail, but to indicate briefly those proposals which are most likely to strike the interest of the average American student.

In the first place, the common German division of offenses into *Verbrechen*, *Vergehen* and *Übertretungen* is accepted. Some slight changes occur in the character of penalties prescribed. Recapitulation, however, is retained as the death penalty. To the three present forms of deprivation of liberty, namely, penitentiary (*Zuchthaus*), prison (*Gefängnis*), and short jail sentences (*Haft*), both Commissions added a fourth, committal to a special institution, or to a special section of a penal institution, from which ordinary prisoners are excluded (*Einschliessung, custodia honesta*). *Zuchthausstrafe* may be for life, or from one to fifteen years. *Gefängnisstrafe*, from one day to five years, unless otherwise specified by law. *Einschliessung*, from one day to fifteen years. *Haft*, one day to three months, unless otherwise specified by law. Short sentence offenders are supposed to maintain themselves by their own labor while undergoing sentence, and to be kept separate from other prisoners. Solitary confinement is prescribed for the first three months of any sentence to penitentiary or prison; short sentences are to be served wholly in solitary; exceptions may, however, be allowed in the prison regulations. Crimes manifesting special brutality or cruelty are to be punished with special forms of severity during the first thirty days of incarceration; but sickness, pregnancy, etc., may relieve the prisoner in part from this increased severity.

Fines are retained, ranging from 3 to 5,000 Marks. Payment in instalments is permitted. In cases of financial inability, only, is payment in labor allowed or to be exacted. Fines up to 50,000 Marks may be prescribed in addition to other penalties for crimes of cupidity.

Loss of civil rights is added to penalties for certain types of crime; but many exceptions are allowed, considerable discretion permitted to judges and prosecutors, and provisions made for rehabilitation.

Judicial reprimand is still maintained, in spite of charges of its futility. It must be administered by the judge himself, and orally as a rule.

Little change is proposed in the present law regarding restitution for damage done; the present maximum figure of 20,000 Marks stands; but, in the future, allowance of a claim for restitution bars the way for civil damages.

In the attempt to work out a practicable concept of "responsibility," the Commission avoided all that debatable ground which surrounds theories of free will and determinism, and chose the middle course already established by German court practice. In terms of the modern controversy between the "Classical" and the "Positive" schools of criminologists, it may be said that the Commission adheres to a rather liberal form of the classical doctrine of penal responsibility.

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Its basic maxim "*keine Strafe ohne Schuld*" is expressed in the draft code in the general principle that those only are penally responsible who commit acts through intent or neglect. No attempt is made to assess the full and absolute social consequences of a given criminal act, nor to prescribe punishment on that basis. While such an attitude cannot be called reactionary, it evidently goes little beyond the *status quo* from the standpoint of criminological theory. Yet the recognition of three milder types of murder, the permission accorded to courts to consider motives and circumstances in every criminal trial, the recognition of mental retardation in the case of some minors between the ages of 14 and 18, the emphasis upon the necessity for special types of institutions for criminal defectives, and a certain liberality in handling the whole category of the mentally weak, indicates a break with the older and more rigid concept of responsibility, and also a tendency to accept more generally the notion of individualizing punishment.

The tendency is all the more noticeable in the provision made for suspended sentence, probation and parole. Probation, so far as we can gather from Dr. Ebermayer, is to be somewhat more widely and more strictly administered. Heretofore, after a successful probationary period, the probationer automatically passed from under the impending sentence. In the future, however, the court releasing the offender under suspended sentence must at the end of the probationary period (two to five years for serious crimes, one to two years for minor offenses), formally determine whether sentence shall be set aside or pronounced. Moreover, the court may recall the probationer at any time to give an account of himself, and, if necessary, pronounce the original sentence. A former single short sentence (*Haft*) is not necessarily a bar to probation if the terms of the former sentence have been fully complied with. In general it may be said that the Commission gives due if not even liberal attention to the whole question of mitigating circumstances. Hence the inclination to invoke other than institutional methods with milder offenders.

Conditional liberation or parole occupies considerable space in the findings of both Commissions. The second Commission finally decided that parole should be accorded offenders from all four types of penal institutions. Those from the *Zuchthaus* must have served three-fourths of their term, or a minimum of one year; those from *Gefängnis*, *Einschliessung*, or *Haft*, two-thirds of their term, with a minimum of at least six months. They may or may not be released under definite supervision. At present, apparently, this phase of the matter is to be left to the legislative and administrative authorities of the individual states of the empire. And on the whole the tendency seems to be to allow private initiative to cover this field of preventive and rehabilitative work. Private societies like the English Borstal Association or our own Prisoners' Aid Societies are favored rather than public officials. Three ostensible reasons account at least in part for this attitude: First, parole is still in its experimental stage; second, it is a moral work, better adapted to private religious or moral agencies than

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to public authorities; third, it must be dissociated from all notions of police activity. After reading this draft code, and after talking with prison administrators in Germany last summer, I cannot help feeling that the Commission should have gone farther in the direction of providing for a definite body of properly trained public parole officers. This, however, in no way disparages the faithful work done by pastors, teachers, and other private agencies attempting to care for paroled prisoners. Anybody who takes the trouble to read through the reports that these workers send in to, say, such an institution as the Wittlich Reformatory, cannot fail to be impressed with the fact that much enviable good work is accomplished by them. But if parole work is to grow properly it must have its backbone in a specialized corps of public officers whose qualifications, salaries, and dignity shall be fully the equal of those enjoyed by institutional staffs. But the Commission has not seen the matter in this light. On the other hand the Commission is to be commended for having extended the principle of parole to persons released from institutions for the criminal-inebriate and mentally defective.

In the matter of rehabilitation the draft code provides that in certain cases not only may civil rights be restored to an offender, but that after twenty years of good conduct following the completion of a penalty all official records of the judgment and penalty may be expunged. In the case of minors the time is cut in half.

While the offender who "makes good" is thus rewarded, the recidivist, the habitual, and the incorrigible are to receive proportionate discouragement. An offender is to be reckoned habitual after five serious offenses committed either at home or abroad, one at least of which entailed committal to the Zuchthaus; he is to be committed to the Zuchthaus if the new offense, when considered with former delictions, indicates a professional or habitual life of crime. If the new offense is a serious misdemeanor the penalty must not be less than two years; if a felony, up to five years imprisonment. Offenses committed abroad are to be reckoned if they are punishable according to German law, and if they entailed at least one year's imprisonment. Such habitual or professional criminals after release, are to be placed under indeterminate supervision by the police, with this restriction, that a regular court must formally order an extension of the period of supervision if it is deemed wise to prolong it beyond three years. If no further trouble occurs within five years the offender passes from under supervision.

Among the special types of penal institutions stressed by the Commission must be reckoned inebriate asylums and workhouses. Offenders committing criminal acts while under the influence of liquor, and who are habitual drunkards, may be committed to an inebriate asylum for a period of not to exceed two years. They may also be placed under supervision after discharge, and may be returned to the institution for relapses. The courts may prohibit these habitual inebriates and also certain other minor offenders from visiting saloons and like places. The workhouse is to be considered a reformatory rather than



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a penal institution; hence it is limited to the care of what might be called the "middle-class" of wrong-doers, the beggars, tramps, gamesters, work-shy, etc. It is to be used as a by-means in connection with committal to prison or jail. Terms range from one year down to two weeks. We may perhaps be permitted to register a doubt as to the efficacy of short workhouse sentences. The records of German workhouses, both compulsory and voluntary, show a discouraging percentage of "rounders."

The *Entwurf* in its section on offenses against public morals adds a stringent paragraph on the white slave traffic, and also introduces important amendments to existing statutes on pornographic objects and literature. Abortion and advertising means for procuring abortion are handled in the conventional way.

I have reserved till the last the Commission's treatment of the juvenile delinquent. Not that the *Entwurf* is in the least radical; to the contrary, it does not go so far as we might have desired. Yet the progressive tone is unmistakable. In the first place, the age of criminal responsibility is raised from twelve to fourteen years. In addition, children over fourteen but not yet eighteen, who on account of mental or moral retardation have not attained sufficient moral discernment, may be relieved from punishment and placed under some educational authority (guardianship, probation, or institutional care). Separate and distinct children's courts are not specified, as all matters of procedure have been left to another prospective Commission. However, Dr. Meyer assures us that the Commission is in heartiest sympathy with the principles of recent juvenile court legislation in Germany. The need for special attention to cases of adults contributing to the delinquency of minors was not overlooked by either the *Entwurf* or the *Vorentwurf*. This must be set down as another instance of a pretty well-defined policy of prevention.

Scattered through this brief review of Germany's proposed penal code reforms are hints that perhaps some clearly justifiable desiderata are not to be quite satisfied in the new legislation. For instance, to us, the retention of beheading as the death penalty appears distinctly unprogressive. Again, the proposed code, in spite of its attention to reformation and prevention, clings more closely than we might have hoped to the principle of punishment as retribution. And it fails to incorporate fully the principle of the indeterminate sentence. What the recommendations of some future Commission will be on the question of a more flexible procedure, of course we cannot say; they might go a considerable way towards carrying out the spirit if not the letter of the indeterminate sentence. Perhaps, again, a shade too much is made of the short sentence; but a wider use of fines by instalments, of probation, parole, and measures against professional and habitual criminals might eliminate this nuisance and my objection. Finally, it is a matter of regret that the *Entwurf* does not frankly provide for public parole agencies.

On the whole, however, Dr. Ebermayer, Dr. Meyer, and their colleagues on both Commissions are to be highly commended for their

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faithful, painstaking work. It was a thankless job. May their efforts bear the same fruitage of fame that has come to the work of their illustrious countryman, Anselm Feuerbach, who just a century ago published the great Bavarian Penal Code.

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ARTHUR J. TODD.

UN GRANDE ISTITUTO DI PROTEZIONE PER GLI EMIGRANTI. By *Prof. Ugo Conti*. *Rivista di Roma*, Vol. V, No. 4, Feb. 1914. pp. 96-107.

Professor Conti's article is nominally a review of the immigration work done by the industrial department of the Y. M. C. A.; but here and there the author launches out into a general critique of American immigration policy. He finds the Y. M. C. A. to be a patriotic and assimilative rather than narrow confessional agency; and quite agrees with them in their methods and purposes in so far as they are striving to combat and prevent crime and other social evils. He appreciates quite highly their *individual* protective measures for the immigrant (in the steerage, at the landing stage, on the way to his job, etc.); also enumerates favorably its various *social* protective schemes—schools, recreation centers, etc.; he furthermore commends its co-operation, especially in New York, with Italian agencies for the protection and welfare of Italian immigrants. But he differs strongly on the general policy of Americanization pursued by the Y. M. C. A. and other public and private institutions. "The new Crusade," said the Y. M. C. A. in one of its pamphlets, "is against foreign colonies on American soil. The United States must be homogeneous to subdue the continent and you can help make it so." Against this militant patriotism and against the insinuation of a twentieth century "barbarian invasion" Professor Conti tilts vigorously. As a reply to this effort to make Americans out of Italians he urges upon his own country the policy of developing means for insuring that immigrants from Italian soil remain Italians. "We must for our part," he says, "make every effort to maintain Italians as Italians, and at least in any case facilitate the repatriation of native Italians." The work of the Dante Alighieri Society is cited as an example of what might be done. Emigration he holds is an evil on principle: Let us have exportation of things, not of men!

As a criminologist he makes two or three acute suggestions. To remedy the tendency toward emigration he insists that his own country must develop internal colonization; a beginning might be made with penal colonies, to be followed by free colonists. The sequel might not be precisely what Professor Conti anticipates, but there is no doubt that plenty of free land lies idle in Southern Italy, ready for occupation by penal farm colonies. Both as penological and agricultural experiments they are well worth a trial.

While deploring the high illiteracy percentages among his countrymen, he opposes our suggested literacy test on the ground that it is not from the unlettered that the worst forms of delinquency are recruited. We do not need to answer his protest except to point out that combatting immigrant illiteracy means draining off stores of energy that might be devoted to other pressing social problems.

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Finding much delinquency among his people in America, due largely to unhealthy city life, he urges them to get out of the great urban industrial centers, and into the small towns or rural districts. "Let us look forward to Italian agricultural colonies." This policy we can hardly approve if such colonists are to be held together in tight groups as outposts of the mother country.

I am unable to substantiate his statement as to the relative rate of homicide among the native born Americans and Italian immigrants. "The majority of homicides in New York," he claims, "are the work of Americans." In the Reports of the Immigration Commission (Abstracts, ii., 186), a table is cited showing the relative frequency of offenses of personal violence tried before the New York City magistrates' courts from 1901-8. Under the heading *violent assault*, Italy appears with 3.5 per cent of the cases as against 0.8 per cent for the United States. Under *homicide* Italy again heads the list with 0.7 per cent, against 0.5 per cent for the United States. These are the absolute figures. The disproportion would appear even greater if the figures were adjusted to the quota each race group contributes to the general population.

University of Pittsburg.

A. J. TODD.

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LA POLICE SCIENTIFIQUE AU BRESIL, PAR *Elysio de Carvalho*. Bibliothèque du Boletim Policial VIII, Imprensa Nacional, Rio De Janeiro 1912, pp. 19.

This 19-page illustrated monograph by the directors of the Rio Police School, which constitutes the eighth number of the Brazilian Police Bulletin is both interesting and instructive. Fourteen pages are devoted to a consideration of the principles upon which scientific police work are founded and to an exposition of the relationship between scientific police work and criminal anthropology, psychology and psychiatry.

The Police School of Rio was established by order of the chief of police on January 12, 1912. The curriculum of this school affords instruction in the general causes of crime, the customs and habits of criminals, the methods of criminal investigation, the Brazilian penal law and police regulations, the portrait parlor, finger prints, and photography.

It is the purpose of this police school to change the attitude of the police. By instructing the men thoroughly in the psychology of the criminal and the habits of criminals it increases their efficiency in the war against crime. Instruction is given by means of lectures, recitations, assigned reading in treatises, laboratory work, map work, finger prints and photographs. The students also receive copies of the Police Bulletin each month free of charge. The course of study is completed in one year, and its graduates have demonstrated in practical police work the value of the training which they have received.

New York City.

LEONHARD FELIX FULD.

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## EDITORIAL

### THE PAROLE SYSTEM A MEANS OF PROTECTION.

As long as the police and prosecuting attorneys in our large cities distrust the system of paroling prisoners from our penal institutions, the public who make the laws and supply the wherewithal to enforce them, want these officials to set out in concrete form the reasons for their faith. It is not enough to point to two or three or a half dozen paroled prisoners who are disturbing our peace. To make an appeal to people who are thoughtful enough to have a care for the public interest, evidence on this question of parole must be as comprehensive as the system itself. Then if, on the whole, the evidence is favorable, we, as thoughtful people, will think only of improving our administration at home to correct whatever weaknesses may be revealed in it; if it is unfavorable, on the whole, we may think of killing the system.

A detailed statement of the parole laws in the States of the Union and their administration may be found in the reports of Committee F of the Institute of Criminal Law and Criminology in the years 1912, 1913 and 1914. The first two reports are published in this JOURNAL in November, 1912, and November, 1913, respectively. The third report was submitted at the annual meeting of the Institute in Washington last October. Its publication is forthcoming.

The facts set forth below will supplement those reports. They indicate more fully than do the reports the degree of success or failure that accompanies parole administration as a settled policy in the treatment of prisoners. These facts have been collated under the direction of the U. S. Commissioner on the International Prison Commission by Mr. B. W. Brown, a graduate student in the Department of Sociology in the University of Chicago. Mr. Brown has secured his data by correspondence with state officials and by consulting the most recent state reports.

#### THE EXTENT OF THE PAROLE SYSTEM.

Where in force	When Adopted
United States (Fed.)	1910
Arizona	1911
California	1893-1901
Colorado	1899-1907
Connecticut	1901
Georgia	(under consideration)
Idaho	1907
Indiana	1897

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Illinois .....	1895-1899
Iowa .....	1907
Kansas .....	1903
Kentucky .....	1910
Maryland .....	1914
Massachusetts .....	1884
Michigan .....	1869-1905
Minnesota .....	1911
Missouri .....	1913
Montana .....	1907
Maine .....	1913
Nebraska .....	1911-1913
New Hampshire .....	1909
New Jersey .....	1898-1911-1913
New Mexico .....	1909
New York .....	1889-1909
North Dakota .....	1911
North Carolina .....	(under consideration)
Ohio .....	1891
Oregon .....	1911
Nevada .....	1913
Pennsylvania .....	1909
South Dakota .....	1911
Texas .....	1911
Virginia .....	1904
Wisconsin .....	1904
Wyoming .....	1909

In addition to its use in Federal cases and in these thirty-two states, parole is utilized, without the indeterminate sentence and the usual administrative features, as in Oklahoma, and has been applied extensively in other countries, notably Great Britain, including Canada (since 1899), Victoria, New South Wales and England, Scotland and Wales, and in France. Although administered in different forms and applied to different classes of offenders and modified in details, *the parole system, once adopted, has never been set aside.*

NUMBER AND PROPORTION OF MEN ON PAROLE WHO HAVE MADE GOOD.

State	Period covered	Per cent	No. Paroled
California .....	1893-1913	85.52	2533
Canada .....	1899-1913	94	5495
Colorado .....	1914	80	
Connecticut .....	1911-1912	91	45
		800	

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Illinois .....	1895-1912	84.3	12000	(approx. 6166 from
Indiana .....	1912	74.1	6945	Joliet)
Massachusetts ....	1911-1912	97	140	(State Prison)
Michigan .....	1911-1912	76.7	1048	
Minnesota .....	1912	74	1355	
Nebraska.....	1914	80		
New York .....	1913	79.2	5717	
New South Wales..	1909	93	112	
Oregon .....	1912-1914	79.3	381	
Pennsylvania ....	1910-1914	73	1007	(Eastern Penitenti-
United States ....	1911	97	345	ary)
Texas .....	1911	97	32	
Washington .....	1914	78	945	
Wisconsin .....	1907-1912	91	512	(prison & refor't'y)

Mean average made good.....84%      38593      (total paroled)

Mean average of failures.....15%

Actual number of failures 6721 or 17.4%.

Mr. E. M. Abbott of Committee F in 1913 made a rough estimate of the proportion who made good and set his figure at 80 per cent.

The above statement includes all the states from which exact figures have been secured. While it is possible that some states that have poor success do not publish their figures, it is also true that states that parole only a few men have the largest per cent of successes with their paroles, and all are for the most part the type of states not included in the above table. It seems safe to say, therefore, that 80% of men paroled fulfill the conditions and become law-abiding citizens.

In the figures just given the proportion of men who violated their paroles was 17.4%. Some of these violations consist simply in failure to report regularly each month to the state officer; some consist in leaving employment, in drunkenness, or vagrancy; still others in violations by committing felony. The number of new crimes committed by men on parole is significant as a test of the system. The figures available are as follows:

California	1893-1913	2533	74	2.9
Canada	1899-1913	5495	145	2.6
Canada	1912		21	2.5
Canada	1913		45	4.9
Illinois	1895-1912	Joliet—6166	404	6.4
Michigan	1911-1912	1048	72	6.8
New York	1909-1910	(Elmira returned on new chgs.)	2	.2
New York	1911-1912	(Elmira returned on new chgs.)	2	.2
New So. Wales	1909	112 (recvt.)	8	7.
Oregon	1914			4.05



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That careless charges of crime by paroled prisoners are not always well founded is indicated by the following statements of W. I. Day (Journal of Criminal Law, May, 1914, p. 134): "Claims that a recent wave of crime in California was caused by paroled prisoners, the state parole officer has proved unfounded. Out of several hundred crimes, only one paroled prisoner was involved, and he is only on suspicion." Similar charges in Englewood, Chicago, have proved false. The January, 1915 report of the Grand Jury to Judge Kersten, Chicago, states: "We find that a large number of the crimes committed are by men under parole. We believe that the parole law has failed in its purpose and therefore recommend its repeal." The jury returned 269 true bills but no evidence whatever is submitted with the above assertion. The public does not know therefore whether the Grand Jury has an iota of evidence to support its declaration.

The facts presented above, as far as they go indicate that the proportion of paroled prisoners who commit crime while on parole is relatively small; certainly they make it impossible to condemn the parole system as a whole.

It is commonly supposed that the introduction of the system of parole has shortened the "time done" by prisoners. On this point the following figures are reasonably conclusive. Such sentences as are indicated below are in addition to the time spent on parole which in no case is less than a year. In some cases—in Michigan for example—the average parole period has recently been more than a year. It was 13 months in 1911 and 18 months in 1912.

## AVERAGE TERM SERVED BY EACH PRISONER.

	Before parole system.	After parole system.
Oregon	1908-1911 1 yr. 5 mo. 20 da.	1911-14 1 yr. 6 mo. 20 da.
Illinois	1894-1895 1 yr. 7 mo. 11 da.	1910-12 2 yr. 10 mo. 8 da.
Illinois	1890-1894 Joliet	1908-12
	2545 1st termers 1 yr. 6 mo. 28 da.	1385 cases 2 yr. 10 mo. 16 da.
	392 2nd termers 2 yr. 27 da.	162 cases 4 yr. 1 mo. 24 da.
	131 3rd termers 2 yr. 6 mo. 20 da.	38 cases 6 yr. 15 da.
Colorado	Average Minimum 1914	2 yr. 9 mo. 26 da.
	" "	3 yr. 3 mo. 24 da.
Massachusetts	" "	1911 182 men 5 yr. 5 mo. 9 da.

That the average term has increased is indicated, also by the estimate of F. L. Randall, now president of the Massachusetts Prison Commission. In the Nebraska state report (1908) we find the following: "In states where the indeterminate sentence law has been given a fair trial, the average term of sentence has increased rather than decreased." The following statement is made in the Oregon state report

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for 1914: "Men are doing more time in this prison under the indeterminate sentence system than they did under the definite sentence. In Idaho, California and Illinois they are doing almost double the amount of time." Massachusetts in 1911 imposed on 182 prisoners an average minimum term of 5 years 5 months 9 days in the state prison, at present the minimum is more than half a year in excess of that figure. The experience of the majority of states is well expressed in the report of the Commissioner for Scotland, 1910, at the International Prison Congress at Washington: "It was feared that the system would lead to unduly short terms of imprisonment, but it has been found in practice to have the opposite effect, the terms served being on the average longer than under the old system." The same result obtains where the parole system and the determinate sentence are administered together. The statistics from California afford evidence of this fact.

### San Quentin report.

### Av. term of discharged convict.

1911. Length of deter. sentence term—(419 men)—2 yr. 4 mo. 19 da.  
Length of term of paroled men—(218 men)—2 yr. 8 mo. 2 da.  
1912. Length of deter. sentence term—(425 men)—2 yr. 4 mo. 7 da.  
Length of term of paroled men—(263 men)—2 yr. 9 mo. 11 da.

Wherever figures can be obtained, they indicate that the introduction of the parole system has been followed by a longer term of service by convicts in prison.

There is division both in practice and opinion on the question of paroling men who have committed more than one felony or who have proven delinquent on parole. The laws of many states, as for example, Colorado, Idaho, Ohio, Minnesota, New Jersey and New York, make it possible to parole either recidivists or persons who have failed to live up to the conditions of their first parole. On the other hand, several states, including California and Illinois, Michigan and Connecticut, place restrictions on the granting of parole to such persons. The last two deny parole to those who have suffered previous convictions for felony; the other states require a longer minimum term in prison for "repeaters" than for first offenders. Many states afford evidence that, even though parole powers may be very broad, the administration is conservative. In Illinois, between July 1, 1895 and September 30, 1912, the record for Joliet is as follows:

Reparoled after violation.....638  
Paroled while serving second term.....439 (7%)  
Paroled while serving third term..... 76 (1%)

Evidence is conflicting on the point of extending parole to recidivists. Ohio and New Jersey have just made such an extension in 1913. The state board of Washington (1915 report) argues that these are

the men "whose conduct should be closely observed, after they step out from behind the walls of a penal institution on parole." The Controller of Prisons for New South Wales (1909) advances the same argument. From France comes the statement of M. Berenger, President of the Prison Society, Paris: "Far from having increased crime, as has been feared, it is the most efficient curb to recidivism, and it is desirable that even more convicts should be conditionally freed." "Statistics of the Napanoch Reformatory, N. Y., show that more than 20% of parole violators who are transferred there, and later paroled, finally secure their absolute release." (Report of N. Y. board of managers, 1913.) The 1912 report of the Scotland Prison Commission contributed also to the argument for paroling old offenders in these words: "During the year, of 120 men who were liberated on license from Peterhead, 33 have been unsatisfactory and reconvicted; 109 out of the 120 had been in prison before, many of them almost continuously for many years."

Very little evidence is available for making a hard and fast rule against paroling delinquents and recidivists. England, however, in 1908 passed a "Prevention of Crime" act, which has been copied in Indiana and elsewhere in this country, to insure more rigorous punishment of habitual criminals. The results of this act in checking habitual crime are under controversy owing to the method of administration. The act itself seems reasonable and well advised.

On the whole, conservative extension of parole in isolated cases, has been justified by conditions and results, but more severe treatment of habitual criminals as in England, if wrong, is at least erring on the safe side from the point of view of social protection.

The expense of administering parole laws varies from nothing whatever as in Washington to perhaps \$20,000 a year in the largest state. In 1914 Idaho spent \$231, New Hampshire \$300, North Dakota \$2,400, Nebraska \$3,300, the U. S. Government \$11,145, Colorado spent \$6,081 during 1913 and 1914, California \$35,000 during 1914 and 1915, Minnesota \$9,551 during 1911 and 1912. In spite of a general need and demand for more parole officers, the highest estimate possible on the cost of parole is relatively small.

The sum saved to the state is variously estimated. The California board sets the figure at \$60,000 per year for 1911 and 1912. The Indiana Board of Charities (1912) writes: "Had they (paroled prisoners) remained in prison, their maintenance for one year would have cost the state at the average per capita expense, the additional sum of \$1,152,555." In the report of the Minister of Justice for Canada, 1916, attention is called to the fact "that were these pris-

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oners still in custody in our prisons, they would not be producers but that they would be wards of the state, costing the country more than \$300 per capita per annum." It is evident that the number of paroles multiplied by the average cost of imprisonment of each man for one year (the parole period is in no case less than one year) minus the cost of administration gives us approximately the saving to the state by the parole system. Setting aside the Canadian estimate of \$300 as excessive, and taking four representative prisons in the United States as a basis, the net cost of each prisoner for one year is, for Sing Sing, \$163.60; Indiana State, \$145.23; San Quentin, \$103.27; Folsom, \$171.24; the average \$148. Assuming that some proportion of this cost is "fixed charges" for buildings, etc., not varying directly with changes in the number of prisoners (although for any period of years and large numbers, this proportion would be very small) let us set the saving in prison expense at the very conservative figure of \$125 for each parole each year. At that figure, the 38,593 paroles recorded in this report must have saved to the states concerned \$4,824,125. But these 38,593 are taken only from 18 states for an average period of less than five years each, whereas the parole system has been in existence in 32 states and several countries for an average of ten years. At this ratio the parole system has saved to the state well in excess of ten million dollars, while the most liberal estimate possible of its cost could not exceed two million dollars.

While the mere absence of a prisoner on parole from prison saves the state the sum indicated above, the actual productive work of paroled men is an additional saving to society at large. The figures available are as follows:

### EARNINGS OF PAROLED PRISONERS.

California	(to 1914)	\$1,407,261.18
Oregon	(2 yrs.)	149,397.00
Washington	(to 1914)	326,340.79
U. S. Govt.	(in 1912)	81,222.21 (besides board, etc.)
	(in 1914)	168,272.91 (besides board, etc.)
Indiana	(to 1912)	1,886,995.53 (besides board, room and laundry of 25 per cent paroled.)

Estimated by the month, figures are available for several states.

Indiana	.....	\$22.65	(As all these are cash wages, excluding
Oregon	.....	32.66	board, room, etc., frequently in addition
Texas	.....	28.00	the average must be well over \$32 a month
Canada	.....	32.00	for each man.)
Washington	.....	42.75	
Iowa	.....	39.00	
Idaho	.....	35.00	
Nebraska	.....	27.00	to \$30.00.
No. Dakota	.....	30.00	farm hands; \$50 up, office help.

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Taking \$32 a month as the average income for the 38,593 paroled men noted in this report, the saving to society through the work of these men for a single year is \$14,819,712. Noting as before that these 38,593 cases are certainly not over 40% at the most of the total number paroled in all the states, we find the entire saving to society through the earnings of paroled men must run well over \$30,000,000.

**Conclusions**—1. The parole system is in force in more than thirty states and several foreign countries, and once adopted, has never been discontinued.

2. The latest and most inclusive figures from all sources show that more than 80% of men on parole make good.

3. The most accurate figures available indicate, in contrast to the large proportion of recidivists under the old system, that only about 5% of men on parole commit new crimes while paroled.

4. The parole system has been accompanied by an increased average time served in prison.

5. There is no evidence that society is endangered thus far through unwarranted parole of habitual criminals; rather the reverse, but their closer detention can do no harm.

6. The cost of parole averages less than \$5,000 a year for each state and not over \$25,000 in any case.

7. The parole system has saved to the state more than ten million dollars or more than five times what it has cost.

8. The parole system has saved to society through the earnings of men on parole, by conservative estimate, over \$30,000,000.

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## CLASSIFICATION AND DEFINITION OF CRIMES.

(Report of Committee D of the Institute.)

ERNST FREUND.<sup>1</sup>

I. *The codification of the criminal law.*—The statutory definition of offenses is a fundamental principle of criminalistic policy. In continental jurisprudence it is expressed by the maxim "no punishment without a statute," which was made part of the French Declaration of Rights of 1789.

In Anglo-American jurisprudence the principle is less uniformly as such (Tucker's Blackstone I, p. 438); in nearly all states the criminal law is in part at least unwritten. But as early as the Fourteenth Century the demand for the certainty of written law gave rise to the statute of treason (25 Ed. III, 1352); the objection to an unwritten common law of crimes was largely responsible for the refusal to recognize a federal common law for the United States as such (Tucker's Blackstone I, p. 438); in nearly all states the criminal law has been codified, leaving to the common law at most a subsidiary force; and in a number of states no act can be punished as a crime unless its constituent elements are specifically set forth in a statute.<sup>2</sup>

II. *Specific offenses.*—The prevailing system of defining offenses can be best understood by comparing it with the rule of civil liability for torts.

It is a general common law principle that an act or other form of conduct, generically characterized as violating a legal duty, or in addition also causing loss or damage, constitutes an actionable civil

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<sup>1</sup>The entire Committee was as follows: Ernst Freund, Chairman; Judge John B. Winslow, Judge Orrin N. Carter, Adelbert Moot, Hon. Stephen H. Allen, Prof. W. W. Hitchler, Wm. M. Ivins, R. H. Marr, N. W. MacChesney, A. Bullard, Dr. Wm. Healy, Joel D. Hunter.

There was hardly any opportunity for joint deliberation or for consultation. An outline of the plan of the report was submitted to the members and approved by a majority of them. The report was thereupon drawn up by the Chairman and again submitted to the members, receiving the approval of Messrs. Healy, Hunter and MacChesney.

Under these circumstances the report can hardly be said to represent the opinions or the conclusions of the entire committee. Since, however, the report is in no sense final, this fact is perhaps not of controlling importance. If the work of the Committee is continued the material and the suggestions contained in the report may be used for what they are worth.

<sup>2</sup>Rev. Stat. Indiana, 1852, ch. 87. Sec. 2: "Crimes and misdemeanors shall be defined, and punishment thereafter fixed, by statutes of this state, and not otherwise."

See also 30 La. Ann. 846; 45 La. Ann. 636.

injury, and the German Code provides in even more general manner that whoever intentionally injures another in a manner contrary to the common standards of right conduct, is bound to indemnify him.

There is no corresponding common law principle or code provision, to the effect that conduct involving a culpable state of mind and causing danger or injury to public interests can be prosecuted as a punishable offense; but certain types of acts designated by readily ascertainable objective criteria of objects or interests attacked and of method or manner of injury, are specified as distinctive offenses, and certain kinds and grades of penalties fixed for their punishment.

Thus we have the offenses of levying war against the state; killing a person; forging an instrument; counterfeiting money; bribing an official; swearing a false oath in a judicial or other official proceeding, etc.

The result of this system of specialization of offenses is that if a misdeed does not fit into one of the specified categories, the wrong doer is not criminally liable, however morally culpable he may be, or however dangerous or detrimental his act.

III. *Generic offenses.*—The system of specialization is necessarily a matter of degree, and there are a few offenses in which the constituent elements are indicated in such a general manner, that the characteristic features of the system are almost lost. The common law offenses of nuisance and conspiracy are the most conspicuous instances in point, but illustrations are also to be found in modern codes.

In the New York Penal Law (Sec. 530) coercion is defined merely by reference to the means used (intimidation by threat or force); any legal right may be the object attacked; and in the German Code the offense is almost equally general. In the Indian Penal Code fraud is defined almost as widely as coercion is in New York, for the protection extends to body, mind, reputation or property, i. e. practically any legal right. Under the German Code the definition of fraud, while likewise very general, at least requires injury to property rights and intent of unlawful gain (or under the new draft Sec. 291, malice); whereas the American codes have no generic offense of fraud, but punish merely specified forms, particularly the use of false pretences for the purpose of obtaining property, or the signature to some instrument, and certain designated swindling tricks (New York Penal Law, Sec. 920-940).

On the other hand, the American codes, following the common law, treat official misfeasance as a generic offense, while the German

## CLASSIFICATION AND DEFINITION OF CRIMES

codifiers believe that without more concrete specification this would be too far reaching, and that there is no need for abandoning in this case the principle of specialization.

IV. *Divisions and classification.*—With a view of covering the entire range of possible offenses adequately, many criminal codes adopt a plan of establishing certain main divisions, regularly on the basis of the interests requiring protection, under which the various specific offenses are classified: offenses against the state or government, administration of justice, morals, order, property, person, and perhaps others.

Except in so far as this plan compels or induces more careful consideration and definition of each offense, it is of secondary importance, and in America the slight estimate entertained of such a system is often manifested by discarding it altogether, and arranging the several offenses alphabetically. This is e. g. the plan of the Illinois Code. Unless one knows in advance the denomination chosen for each offense, the alphabetical arrangement adds nothing to the facility of reference; it looks cheap and mechanical, and generally goes hand in hand with inferior care and skill in definition.

The German Penal Code arranges offenses systematically, but without dividing up the entire field into a few main heads. In its second part ("The several offenses") it deals successively with the various protected interests or species of punishable wrongdoing, forming altogether twenty-nine subdivisions. Where the subdivision represents some one protected interest it means that specific forms of attacking it are mingled out as different offenses; where the subdivision represents some one species of wrongdoing, there is one general offense, and certain modalities of it are merely dealt with by reason of mitigating or aggravating circumstances as subspecies of the same offense. Thus there are subdivisions of offenses against civic rights, against public order, against religion, against life, etc., which represent the former type, while other subdivisions deal with perjury, treason, libel, assault, larceny, etc. It is obvious that this arrangement represents no special theory of classification but is merely a matter of convenience.

V. *Relation of specific offenses to scientific classification.*—While penal codes differ in their divisions, there is considerable similarity between them as regards the specific offenses dealt with. This similarity indicates that the selection of certain forms of delinquency as punishable offenses must to a great extent be based upon inherent and permanent elements. Criminal conduct, like lawful business,



proceeds along a limited number of rather well defined lines, and—although to a less extent—this uniformity extends even to the incidental or secondary features of crime.

Moreover, there is often a distinct correspondence between a specific offense and a specific degree or type of criminality; thus forgery and counterfeiting represent different grades of danger; larceny and embezzlement different grades of guilt; stealing from the person a distinctive class of offenders. If this is so, it is a legislative mistake to obliterate the distinction, as is done in those American states in which embezzlement is made larceny. Cases in which distinct types of offenses do not present marked or different types of criminality (as e. g. robbery and burglary) are the exception rather than the rule.

So far as there exists such a correspondence between distinctiveness of statutory crime and distinctiveness of type, the system of specific offenses answers the requirements of criminalistic science. It falls short, where some specific crime is not adequately differentiated, and where proper weight is not given to the more subtle varieties of incident, motive and state of mind which constitute distinguishable types in the commission of criminal acts.

VI. *Illustrations of the shortcomings of specific definitions.*—

(1) *Homicide.*—The most conspicuous of all forms of crime—homicide—presents the shortcomings of differentiation to a marked degree. It also illustrates well the difference between criminal codes in this respect.

Most systems (the South Latin countries form an exception) grade the offense of homicide into two main denominations corresponding to our murder and manslaughter. The German law does this according to the presence or absence of premeditation and adheres to this distinction.

The express malice of the common law is probably the equivalent of premeditation (New York: "deliberate and premeditated design"); but the term malice is misleading and in many cases quite inappropriate. Moreover the common law recognizes also an implied malice which is no clear and scientific criterion at all, but the meaning of which can be grasped only by a study of decided cases. Illinois attempts to define implied malice as existing "when no considerable provocation appears or when all the circumstances of the killing show an abandoned and malignant heart." This appears to have been suggested by the statement of an old text writer (Foster) which speaks of "plain indications of a heart regardless of social duty and

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fatally bent upon mischief." Of this a modern text writer (McClain, Sec. 522) says that it is too general to be of any value. If killing was incidental to the commission of a felony, the common law implied malice, although the killing was unintended.

Under the term "manslaughter" again two entirely different species of offenses are included, namely killing with design (upon sudden impulse, on provocation, etc.), and killing without design (by carelessness,—unless implied malice makes it murder).

Illinois, while making a verbal distinction between voluntary and involuntary manslaughter, does not differentiate between the two in the matter of punishment.

New York has a more elaborate classification of homicide, distinguishing two degrees of murder and two degrees of manslaughter. The common element is the result: the loss of human life; otherwise murder in the first degree throws together premeditation and other specified circumstances of aggravation; murder in the second degree is characterized by design without premeditation. Characteristic of manslaughter is the absence of design to effect death, and the two degrees are differentiated by specified circumstances, abortion being also designated as manslaughter.

The German Code, further, deals specifically and more leniently with three types of homicide: duel, infanticide, and killing at the request of the person killed; the penalties are a great deal milder than in case of murder, and a penitentiary sentence is allowed (not required) only in the case of the killing of the newborn illegitimate child by the mother.

No American jurisdiction makes any allowance for any of these three forms: New York deals with dueling rather by way of aggravation, for killing in a duel fought out of the state by appointment made within the state is made murder in the second degree, leaving it to be inferred that killing in a duel in the state is murder in the first degree.

On the other hand, the German law, in the case of murder, departs from a policy observed with regard to most other crimes, by failing to provide for the admission of mitigating circumstances; and by fixing the death penalty for murder exclusively, it shuts out any individual consideration except through the exercise of the pardoning power or through the irresponsibility of jury verdicts.

Neither the German nor the American law recognizes motive as a relevant element in homicide, so that killing to punish a grievous

wrong (the betrayer of a woman's or a husband's honor—the latter made allowance for in some Latin codes—), killing to save from dishonor, killing to place beyond suffering (—the suggestion of a special provision was recently rejected by the German Criminal Code Commission<sup>3</sup>) and killing in a civil strife, are all undifferentiated forms of one crime,—a policy which ignores profound differences of ethical and popular estimation, and which in its turn is practically nullified in the administration of criminal justice.

(2) *Larceny*.—Turning to the most common form of crime, stealing or larceny, it appears that the main line of division in the Anglo-American law is drawn according to the value of the property stolen (grand and petty larceny). Fixing the line of decision at a definite value is so mechanical that it would be intolerable if the correction were not applied by the findings of juries. Intrinsically, the notion of petty larceny is sound enough, and the total absence of its distinct recognition in the German law was found to be a defect, although the penal code punished ordinary theft only by jail sentence with a minimum of one day. It is now proposed by the new German draft to provide for petty larceny in two distinct forms: where articles of consumption are taken under the impulse of need or of a strong physical desire, and where things of insignificant value are taken from members of the same household. Under these circumstances special private prosecution is required, and in the case of articles of consumption there may be merely fines or detention, and in specially light cases the penalty may be remitted altogether. No particular account is taken of misappropriation out of pure mischief or upon a sudden impulse in the face of special temptation. However, the German Code grades embezzlement lower in the scale of criminality than larceny, while American codes put it in the same class, and sometimes even use the same designation for both offenses.

Special forms of larceny are often differentiated by circumstances of aggravations: stealing from a person, stealing at night, or from a house, etc. The German code recognizes aggravations according to the kind of place from which taken, the manner of entry, the use of false keys, the use of weapons, stealing in gangs, at night time, etc. The new draft code adds as aggravating elements habitual or professional stealing. Other aggravations constitute according to most systems distinct specific offenses (robbery, burglary).

VII. *Subdifferentiating specific offenses*.—A comparison of the German with the American law shows a much larger number of cases

<sup>3</sup>Motive, 1909, p. 843, Juristen-Zeitung 16, p. 1045.

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in the former, in which elements or circumstances indicative of greater or less guilt are specifically set forth as affecting the grade of the offense or the measure of punishment.

The new German draft code of 1909 is particularly instructive in this respect, as will appear by reference to the following examples:

Illegally obtaining official secrets: aggravated by intent to use to the prejudice of the state; aggravated to a less degree by a knowledge of the danger of publicity. (Sec. 108, 110.)

Resistance to officer: aggravated by exposing the latter to considerable danger (Sec. 126); further aggravated by joining forces with others, and by acting as ringleader (Sec. 127).

Passing of false or clipped coin: mitigated by fact of it having been received as genuine (Sec. 160, 161).

Voluntary manslaughter: aggravated by connection with other crime (Sec. 214); involuntary manslaughter, aggravated by neglect of special duty of attention (Sec. 219).

Duel: aggravated by absence of second (hence seconds are not punished), by culpable provocation, by violation of customary rules; mitigated by precautions against danger to life (Sec. 220-226).

Assault: aggravated by use of dangerous instrument (Sec. 226), by intent to inflict serious injury (Sec. 229), by several joining (Sec. 231); mitigated where the result of an affray (Sec. 233).

Kidnapping: aggravated by purpose of gain or immoral purpose (Sec. 235).

Abduction of female: differentiated according as purpose is marriage or immorality (Sec. 236).

Seduction: punished only if brought about by deception (Sec. 246).

Lascivious acts: punished only if committed in connection with abuse of position of authority (Sec. 247).

Crime against nature: aggravated likewise by abuse of authority (Sec. 250).

Pandering: aggravated by connection with abuse of authority (Sec. 252), also by use of deception, and by making it a means of livelihood (S. 253).

Fraud: aggravated by habitual practice or by making it a means of livelihood (Sec. 276);—same in case of receiving stolen goods (S. 281); election fraud: aggravated if committed by one having official duties (120).

Official peculation: aggravated by false bookkeeping (Sec. 209).

Engaging upon a criminal course of conduct as a matter of habit

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or means of livelihood aggravates the following offenses: receiving stolen goods, usury, gambling, coin clipping, pandering, living on the earnings of a prostitute.

It should be noted that the system in practically all those cases is first to give an inclusive definition of an offense which covers all its subspecies, and then to allow the consideration of specified accompanying elements.

This is preferable to the method of creating separate offenses characterized by the presence or absence of specified elements, which would enhance difficulties of proof and of interpretation and enlarge the channels of escape on technical grounds.

The careful sense of justice manifested in these discriminations stands in marked contrast to the readiness with which in American codes offenses of very different characteristics are thrown together under a common denomination and grade of punishment; making not merely embezzlement, but the receipt of deposits by an insolvent banker larceny; making intercourse with a girl under the age of sixteen or even eighteen equivalent to rape (statutory larceny; statutory rape; compare the provision of the New South Wales Crimes [Girls' Protection] Act of 1910 raising the age of consent from fourteen to sixteen, but making an exception for intercourse with common prostitutes reasonably believed to be over sixteen); covering under one common provision simple sexual immorality and the commercial exploitation of vice, as is done by the Federal White Slave Act; failing to distinguish between acts of harmless though forbidden use and acts of defilement and contempt, as in the new acts regarding the use of national flag,—all instances which it would be difficult to parallel in the criminal legislation of Germany which, generally speaking, takes great care not to include in the same provision radically different types of guilt.

VIII. *Reasons for the shortcomings in differentiation of crimes.*—Defects of classification and definition may be due to one or more of the following causes or circumstances:

(1) To mere inadvertence of carelessness in thinking out or formulating the constituent elements of an offense.

The remedy lies in the improvement of methods of drafting statutes and can be most readily applied in the definition of newly created offenses.

(2) To conservatism in following bad or antiquated models and precedents.

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The possibility of reform depends upon the ability to demonstrate that the change will not involve a loss in certainty.

In a number of cases it can be shown that the pretended certainty of the established definition is illusory.

It might be worth while to inquire carefully whether the substitution by the Penal Code of New York of the idea of premeditation for that of malice aforethought as the characteristic element of murder embarrassed to any extent the administration of criminal justice. A cursory examination of the Reports fails to indicate any such result.

(3) To popular feeling which being aroused against some type of offense insists on having the circumstances which have made it odious set forth in the definition without regard to their scientific value, and which also sometimes insists upon having the offense graded more severely than it deserves (criminal anarchy; violation of anti-trust act a felony, etc.).

(4) To a deliberate attitude of non-compromise with regard to certain types of offenses (murder, duel, statutory rape, embezzlement, perjury).

There are important differences in this respect between Anglo-American and continental codes; but in practically all systems we find the same refusal to recognize certain motives for homicide which in the practical administration of justice lead to non-prosecution, acquittal or pardon. The refusal of juries to convict shows that the pardoning power is felt not to be an adequate remedy.

It is true that homicide, in a sense, is not a typical offense. Like perjury it is a crime, the reaction against which appeals to sentiments and instincts of a religious and therefore incommensurable order.

(5) To the difficulty of finding an adequate formula of definition owing to vagueness of concepts or to inadequate knowledge. (Definition of monopoly or of unfair competition).

This may indicate that the subject matter is not ripe for criminal legislation.

(6) To the practical impossibility of admitting into a criminal code such a minute differentiation of specific offenses as would do perfect justice to all relevant consideration of guilt.

This raises the question whether the universally established policy of specialization of offenses should either be superseded or supplemented by a system of more generic or abstract differentiation.

*IX. The relative advantages of specialization and generic differentiation.*—A purely abstract system of differentiation would pro-

ceed upon the theory that the criminality of an act is determined by the value of interests destroyed, attacked or jeopardized, by the motives actuating the offender, and by the circumstances from which the degree of fixity or intensity of criminal purpose may be inferred; such a system would assign relative grades in the scale of criminality to these various elements, and judge any given act according to the manner in which the elements of guilt and danger were found to be combined in it.

The system of specialization, on the other hand, is founded in the theory that the point of aggravation at which misconduct becomes punishable depends upon a public sentiment for which there is no absolute or scientific criterion; that guilt, injury or danger may be not sufficiently aggravated to merit the social stigma of criminal punishment; or that the difficulties of discovering or punishing misconduct may be such as to make prosecution more harmful than impunity. The definition of crime is thus determined by variable considerations of policy, and becomes positive, conventional, to a slight extent even arbitrary.

Undoubtedly from the point of view of perfect and ideal justice a system of specialization leaves much to be desired. Judged not only by purely ethical standards, but in its social aspect and effect, conduct which the criminal law does not reach may be far more culpable and dangerous than many a punishable offense; and it cannot be denied that these defects and anomalies produce a sense of wrong in individual cases as well as generally among serious thinkers, which has to be reckoned with in estimating the practical effects of criminal law.

The advantage of the system is that it informs the public of the province of criminality, indicates clearly the line between distinct specific offenses to which different grades or limits of penalties are attached, and removes the excuse for harassing or blackmailing prosecutions which a system of undefined offenses invites.

The ready made categories of specific offenses furnish, so to speak, a familiar currency, the various denominations of which have been accepted by, and in their turn have shaped, the public sense of right and wrong. For this reason perfection of definition in criminal law depends as much upon intelligibility as upon abstract refinement.

Conversely in an abstract system of differentiation a valuable checking and educative influence of our present criminal legislation would be lost, for such a system of determining offenses would not impress the popular mind so strongly as definition of specific crimes.

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And not only would public opinion have to be educated up to the new standards, but the critical judgment of acts on the basis of a considerable number of objective and subjective elements of rather abstract or general description would make considerably greater demands upon the analysis of phenomena and psychological discrimination than does the present system, and in untrained and unskillful hands there would be the possibility and certainly the suspicion of arbitrary decision. With a jury system this objection weighs particularly.

The considerations pointed out preclude the idea of abandoning absolutely our present system of specific offenses; and the path of reform lies clearly in the direction of merely supplementing it by allowing in a fuller measure the consideration of the various elements that enter into the commission of crime.

And in carrying out such a policy, methods should be adopted by preference, which merely develop ideas already recognized in the existing criminal law and accepted by it on the basis of experience and practice.

As regards the definition of crimes the most promising lines of reform would therefore seem to be a more perfect consideration of relevant elements of criminality in connection with specific crimes, and a system of generic differentiation for supplemental use in specified departments of criminology.

As regards classification of crimes, a new scheme of division is suggested which has for its main purpose a better differentiation of administrative or procedural methods and the definite segregation of common crimes from other offenses which do not present the same criminological problems.

X. *A more perfect consideration of relevant elements of criminality in connection with specific crimes.*—Some illustrations have been given of the superiority of German over American codes in sub-differentiating offenses by reference to circumstances affecting guilt or danger in particular offenses.

It has also been pointed out that perfectly adequate provision of this kind by further sub-differentiation of specific offenses would unduly strain the principle of specialization.

The German code concedes the inadequacy of its plan by adopting in addition a system of mitigating or extenuating circumstances, which is also found in the other continental codes; and the new German draft code of 1909 has besides some very noteworthy provisions



regarding the effect of certain conditions attending the commission of crime upon the grade or scale or penalties.

(1) **Mitigating circumstances**—the system of mitigating circumstances originated with the French Penal Code. France, Belgium and Italy allow mitigating circumstances to be given effect in all crimes by reducing the minimum normal penalty; Germany excludes them in certain offenses (e. g. perjury). The codes do not specify what constitutes such circumstances. There is no equally general provision for aggravating circumstances.

(2) Provisions permitting the normal scale of penalties to be departed from in the presence of specific elements bearing on guilt are much rarer.

The German code provides in Sec. 20: "Where the law leaves the choice between penitentiary and fortress, the sentence may not be for penitentiary unless it is found that the act proceeded from a dishonorable state of mind."

The draft of a new penal code (1909) has the following provisions:

Sec. 18. If the act manifests special atrocity, malice or infamy (abandoned mind), the court may order special measures of aggravation in connection with imprisonment.

Sec. 81 directs that in admeasuring penalties regard be had to the general character evinced by the deed, motives, object, impulse or temptation, personal and property relations, degree of intelligence, consequences of act and the offender's attitude with regard to them, especially repentance and the effort at reparation.

Sec. 83 authorizes the court to reduce the penalty below the minimum (and, where specially provided, to remit it) in especially light cases, as where the consequences of the act are insignificant, or the criminal intent slight, or, in view of the circumstances, excusable, so that the regular penalty seems unduly harsh.

Sec. 84. Circumstances of special aggravation exist where the consequences are exceptionally grave and the criminal intent appears abnormally strong and wicked. Such circumstances shall, however, alter the penalty only where the law expressly so provides.

Sec. 85 extends Section 20 of the present code (see above) to all cases of choice between penitentiary and other deprivation of liberty.

Secs. 67, 68 make special provision for relapse into crime or recidivism.

Sec. 89 contains a provision for professional and habitual criminals.

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The Norwegian Code provides (Sec. 24) that where the penalty is imprisonment, detention may be substituted if it may be inferred from particular circumstances that the act did not spring from a corrupt mind.

(3) The American codes have neither any provisions like these nor any system of mitigating circumstances. A very liberal range of minimum and maximum penalties serves in the case of many crimes to some extent as a substitute, particularly under the theory if not under the practice of modern indeterminate sentence laws, but it must be observed that there is very commonly a minimum penalty of one year, and in many cases that there is provision only for penitentiary sentence, so that there is no possibility of substituting the very much lighter form of imprisonment in jail—a very common German provision in case of mitigating circumstances.

XI. *A system of generic differentiation for supplemental use.*—The most satisfactory solution of the problem would seem to lie in the further expansion of the system of mitigating circumstances and of provisions for altering penalties.

The expansion should take the form of a careful elaboration of a complete system of relevant elements of criminality, and a general provision that in adjudging specific offenses, they should in some way be taken into account.

While the usual definitions of specific offenses confine themselves to stating the object attacked and the method of attacking it, and do not in the majority of cases, give any place in the definition to the incidents which individualize crime, the proposed system would attempt to do full justice to the latter, and utilize them for a more adequate classification of offenses. Motive and circumstance would play as important a part as subject matter and form of a delinquency.

Sec. 81-89 of the New German Code of 1909 (above referred to) indicate the general scope of such a system. The problem would be to bring together, as far as can be done, all relevant elements bearing on guilt, and evaluate them in a satisfactory manner; so that it could no longer happen that owing to lack of provision in the criminal code the law in dealing with a crime obliterates the most vital differences bearing upon its true nature.

Under such a system the infinite varieties of the crime of murder would for the first time find some legal recognition, and cognizance might also be taken of the fact—important as regards reform measures, etc.—that the problem presented by the crime of murder differs radically from that of theft, robbery or burglary. It might be possi-

ble to avoid the unfortunate alternative between excessive, inappropriate and futile punishment, and absolute acquittal.

Applying such a system, it would make a difference in the crime of perjury whether its object and effect was simply to shield a guilty person, or to procure an unlawful gain, or the conviction of one who is innocent. Since our laws permit the defendant in a criminal case to testify under oath, it is manifestly unreasonable not to allow the temptation to count in his favor, for the requirement of an oath under such circumstances is almost a direct invitation to perjury.

Again, if bigamy is committed with the knowledge and consent of the three parties concerned, it is not the same offense as if the other party to the legal marriage is not a consenting party, still less if the other party to the illegal marriage is ignorant and deceived; and this difference seems to be recognized in a few codes (Holland, Hungary, Norway).

Surely the differences thus pointed out by way of illustration are relevant; yet the prevailing system of criminal law ignores them; and if they are taken into account as mitigating circumstances, or in fixing the penalty at its legal minimum, there is nothing of record to show that this was not due to favor or sympathy. The offender stands convicted with all the possible implications which the statutory definition of the offense permits, and the differential circumstances of the commission of the offense neither entitle nor expose him to differential treatment after conviction.

If it is proposed to supplement the prevailing system of specific offenses by a collateral system of more generic differentiating elements, the question must also be approached what concrete legislative form such a system is to take.

The three points to be considered would be: the elements to be specified as relevant in differentiation; the relative value to be attributed to them; and the manner of their application to particular offenses.

The first two points would present a problem of criminology. the last one a problem of criminal law and procedure.

Assuming the possibility of reaching satisfactory results with regard to the first two points, should the offender have a legal right to have all elements submitted to the jury with appropriate instructions? It is easy to see that strong objection would be made to such a complication of the criminal law, and that with such consequences in view, an agreement upon the elements to be recognized and their effect would be most difficult to obtain.

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It would therefore be wiser and more conservative, for the beginning at least, to operate such a system without altering legal rights. This could be done in all cases where at present measures are permitted with regard to offenders, in respect of which technical claims of illegality or unconstitutionality cannot be raised, or can be disposed of without difficulty and without injustice to substantial rights.

More particularly such a system might be applied:

(1) First and foremost, for the purpose of keeping criminal statistics. Here the administrative obstacles to reform would be least. On the other hand, it is here that there is the most urgent demand for scientific definition and classification. In view of the desirability of uniformity for scientific purposes, it would be legitimate to aim at national, or even international agreement for such a scheme of classification.

(2) For the purpose of dealing with juvenile delinquents; since here there is already a tendency to supersede the ordinary categories of offenses by the more subjective circumstances and motives of the individual act.

(3) For determining methods of treatment after conviction, i. e. after the system of specific offenses has fully accomplished its purpose of protecting the liberty of the individual against an undue or arbitrary extension of punishable acts.

It is true that the convict as well as the accused, is entitled to the guarantees of due process and therefore no circumstances should be allowed to count in aggravation of punishment that have not been charged and established in accordance with established rules of criminal procedure. But there is no reason why the fullest effect should not be given to mitigating circumstances irrespective of any technicalities of indictment, trial or evidence.

Certainly there could be no objection to applying the proposed scheme of differentiation to the administration of indeterminate sentence laws, or to the exercise of the pardoning power.

Combined within limits so conservative, even a radical plan of reform need not arouse any strong opposition. In any event, the details of such a plan would be necessarily matter of further thought, suggestion and criticism. The primary question to be determined is whether something like the scheme here proposed would secure better consideration for phases and incidents of criminality now ignored or insufficiently recognized by our codes.

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TENTATIVE CLASSIFICATION OF CONSTITUENT ELEMENTS  
OF CRIME RECOGNIZED IN MODERN CRIMINAL CODES.

- A. Interest attacked or endangered.
  - 1. Safety of the State.
  - 2. Ordinary safety of person or property.
  - 3. Purity of justice and administration.
  - 4. Maintenance of government authority.
  - 5. Common peace, order and decency.
  - 6. Purity of sex relation.
  - 7. Conformity to legislative policy.
- B. Forms of delinquency.
  - 1. Disorderly conduct.
  - 2. Omission of duty.
  - 3. Disobedience.
  - 4. Abuse of authority.
  - 5. Corruption or seduction.
  - 6. Betrayal or breach of trust.
  - 7. Coercion.
  - 8. Threat.
  - 9. Violence.
  - 10. Stealth.
  - 11. Fraud or falsehood.
  - 12. Procurement, aid, attempt.
- C. Circumstances mitigating or aggravating guilt.
  - (a.) Objective.
    - 1. Value of object, extent of danger or injury.
    - 2. Remoteness or proximity of danger.
    - 3. Specific relation to object or victim.
    - 4. Numbers.
    - 5. Openness or secrecy.
    - 6. Special contrivances.
    - 7. Atrocity, cruelty, helplessness of victim.
  - (b.) Subjective.
    - 1. Motive (gain, malice, fear, distress, altruistic motive).
    - 2. Abnormal state of mind.
    - 4. Vagueness of intensity of purpose.
    - 4. Temptation or provocation.
    - 5. Repentance and reparation.
    - 6. Habit.
    - 7. Profession.

XII. *A more perfect classification of crimes.*—It is suggested that crimes be classified according to the great categories of the interest attacked or violated, viz.: the safety of the state and maintenance of the authority of the government;—the conformity to legislative policy;—the purity of justice and administration;—the maintenance of peace, security and good order;—the purity of sex relation;—the ordinary or common safety of person and property; making the following great classes:

- (1.) Political offenses.
- (2.) Statute violations.
- (3.) Administrative crimes.
- (4.) Police offenses.
- (5.) Crimes against morality.
- (6.) Common or ordinary crimes.

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(1.) Political offenses present a problem to be dealt with by the supreme organs of the government; for they are indicative of a state of disturbance of the political and social equilibrium, to cope with which the ordinary machinery of criminal justice may be ill adapted or powerless, and the ordinary penalties of the law singularly inappropriate and futile. Offenders of this class will be more effectually proceeded against if the consequence of a conviction will not be to stamp them as ordinary criminals.

We have a precedent for the distinctive treatment of political offenders in the proceeding by impeachment. This, however, is unsatisfactory and objectionable because the guaranties of impartiality are absent. Trial of such offenses by the supreme court with a jury (for which a constitutional amendment would be necessary) would be more appropriate.

These observations would not apply to offenses which, while directed against the safety of the state, would proceed from other than political or similar motives. The person who betrays the interests of his country for a money consideration is a common criminal and should be treated as such.

(2.) The term "statute violations" is chosen as a convenient designation for the offenses against the penal classes which are found in every one of the many regulative statutes which annually emanate from our legislative halls.

Frequently these statutes represent a controverted, if not dubious, policy imposed by a majority upon a resisting minority, sometimes worked out without due care or deliberation; the interests opposing them, if not legitimate, have the adhesion of large and not necessarily lawless classes;—not uncommonly in the past these interests represented liberty and progress, and occasionally they do now.

Experience has demonstrated the futility of attempting to deal with offenders against such statutes as common criminals, and the general policy of legislation is to rely upon relatively mild penalties, and in many cases to create special organs for their enforcement. Even as a matter of outward arrangement in the statute book, the great mass of penal provisions accompanying economic and social legislation does not appear as part of the criminal law.<sup>1</sup>

It is very probable that the system of enforcement through injunction will occupy an increasingly large place in this kind of legislation; and even if the violation of these injunctions will ultimately

<sup>1</sup>In New York they are to a considerable extent incorporated in the Penal Law.

come to be adjudged by juries, there will be in this method of enforcement a definite separation from ordinary crimes.

(3.) A general category of administrative crimes is at present not generally recognized. It deserves, however, consideration whether a separate place should not be assigned to them in a criminal or punitive system.

Taking perjury and tax defraudations as types of this class (it being assumed that the object of the crime is not to jeopardize other private interests), the distinctive feature of these offenses is that they are more readily committed than offenses against person and property.

Unfortunately, public sentiment is laxer in defense of public than of private interests; and where loose practices have become entrenched, the policy of severe and dishonoring penalties, so far from aiding law enforcement, makes convictions difficult and rare.

It might therefore be advisable to develop further with regard to this class of offenses a system of repression that has the sanction of traditional practice in connection with the public revenue; namely, the system of summary administrative penalties. In the case of perjury and bribery this would have to take the form of contempt process. In certain British colonies perjury is already dealt with on this basis; and the adoption of a similar system in this country would present no difficulties in case of perjury committed in court. A more general extension of contempt process may offer constitutional difficulties. It is, however, believed that these can be avoided by giving an unrestricted right of appeal to the courts.

(4.) Police offenses are both in legislation and administration often distinguished from common crimes. Either the interest affected or the guilt involved, or both, are less serious or urgent. The power or even policy of repression is to a considerable degree delegated to local authorities, and summary powers of abatement may be appropriate. While there are cases on the boundary line of other categories (obscenity, immorality; illegal sale of liquor, disorderly saloon or drunkennesses), the province of this division can be marked out with tolerable certainty.

(5.) Crimes against morality differ from common crimes in various respects:

(a) They may be committed without invading any right, and without touching directly any public interest.

(b) They are more frequently than other crimes the product of morbid impulse or abnormal instinct.

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(c) The prosecution is peculiarly liable to be attended by undesirable practices of blackmail, etc.

(d) Owing to the difficulties of evidence the vast majority of crimes of this class remain unpunished.

For these reasons there is not entire unanimity of opinion whether these crimes should be prosecuted where private rights, public order or public institutions are not at least in some degree involved, i. e., where the only parties concerned are consenting, above the age of discretion, and no outside interest is at stake (incest, crime against nature, fornication, perhaps adultery, as contrasted with rape, crimes against children, and bigamy). Italy punishes only where there is some element of publicity or scandal.

Unless these considerations are deemed to be of controlling influence there is no particular reason for placing crimes against morality in a separate class from other common crimes.

(6.) There remains the class of common or ordinary crimes which constitute the main preoccupation of criminal legislation and criminal justice. But for them, there would be no social problem of crime, no elaborate machinery of prosecution and punishment. To prevent and repress them is the primary function of the organized community.

It is also an important fact that there is practically no division of opinion regarding the necessity of repressing these common crimes; for this fact raises a question of an administrative nature which may be worthy of serious consideration:

The enforcement of laws enacted to carry out some policy that is controversial in the sense that large classes of the population are hostile or passively resistant to it, necessarily exposes the prosecuting office to intrigue and devious influence, and, in a popular system of government, throws it into politics. Any amount of well meaning effort at reform will not alter this situation.

From this results a weakness and time serving tendency of the prosecution and, especially also of the police, and this in turn reacts unfavorably upon the repression of ordinary crime.

Were offenses clearly differentiated on the basis here proposed, the repression of the common crimes against person and property might be placed in the hands of officials absolutely divorced from the enforcement of widely controverted or resisted policies, and put on a professional and scientific basis.

It may be suggested that the task of classification does not end with the establishment of the category of common crimes, but really



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begins there. Indeed the attempts which criminologists have made to classify crimes have practically confined themselves to the ordinary crimes against persons and property, and against morals. The basis of classification has usually been the type and character of the offender (American Journal Criminal Law 1, 906: born, habitual, occasional;—Motive Vorentwurf, 1909, 1, 338: occasional, capable of reform, incapable of reform).

If such a classification is to be utilized for procedural or punitive differentiation, it must not be too controversial for ready application in any particular case; and if any basis of classification will ever become scientifically established, it will speedily impose itself upon the administration of justice.

This particular problem of classification is therefore primarily psychological, and not juristic; and no adequate justice can be done to it in this report.

### CONCLUSION

It is fully recognized that the proposed reclassification of crimes is too far reaching and presents too many controversial problems to constitute for the immediate future a practical legislative program: it is offered merely as a suggestion for consideration and criticism.

Unless it can serve some practical purpose, by way of administrative differentiation or otherwise, a logically perfect classification is not a matter of supreme importance.

A complete system of the relevant elements of guilt is, on the other hand, a prime desideratum of criminal law reform. As pointed out before, the problem of defining the elements to be specified as relevant in differentiation and of assigning to each its relative value in determining guilt and punishment is one for the solution of which the legislator must look to the trained criminologist.

If the general idea here suggested is a sound one, it should be pursued by working out some such scheme as is indicated in the note to No. 11. Only further detailed work can show, whether, to what extent, and in what form the plan is practicable.

## A PROPOSED DRAFT OF A CODE OF CRIMINAL PROCEDURE.

(Report of Committee E of the Institute).<sup>1</sup>

WILLIAM E. MIKELL.

The procedural statute herein proposed has been framed after a careful study of the common law and of all the statutes in force in the English speaking jurisdictions of the world. The cases interpreting such statutes have been carefully read. What have been deemed the best features of the systems of criminal accusation in force in these jurisdictions have been incorporated into the system herein proposed. The features which involve the most general changes in the common law system of accusation have been borrowed from statutes in force in English colonies and the more specific provisions have been taken from American statutes.

In order to explain the purpose and effect of the various sections of the proposed act it is necessary to explain the distinction taken in the first section between the terms "the offense" and "the transaction." Every complete criminal accusation informs the accused of two matters which, although they are mixed in the accusation, are none the less really distinct, and should be dealt with separately in a statute concerning accusations. Every complete accusation should inform the accused of what crime he has committed and should also state sufficient matter to differentiate that crime from other crimes of the same nature; i. e., the accusation should show whether the accused is charged with the commission of murder, or robbery, or obtaining property by false pretences, or some other offense, and it should also show who was murdered, what person was robbed and whose and what property was obtained. In this act, the averments which are necessary to show what crime is charged against the defendant are termed averments of "the offense," and averments which show the victims, subjects or objects of the acts charged are termed averments of "the transaction." The term "offense" as used in the cases found in the reports includes what are termed in this act the "offense" and the "transaction" and is frequently used even in the same case to refer to each of these matters, but that is because there are no words in the English language which of themselves express the distinction between them. In the statutes the distinction is felt rather than expressed

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<sup>1</sup>The membership of this committee is as follows: Prof. W. E. Mikell, Univ. of Pa.; Prof. E. R. Keedy, Northwestern Univ.; Dean Harlan F. Stone, Columbia Univ.

when such a phrase as "the nature of the offense" is used to express what is herein termed the "offense." In *Newcomb v. State*, 37 Miss. 383 (1859), quoted with approval in *State v. Snell*, 24 W. Va. 767 (1884), the same distinction is taken and the term "nature of the accusation" is used to express the term "offense" and "cause of the accusation" to denote "the transaction."

With this discussion of the meaning of these words as used both in the act and in this report, it is possible to explain the purpose of the entire act. Briefly expressed, the proposed system of criminal accusation is this. The first pleading on the part of the state, be it an indictment, information or some other formal pleading, need only state the offense which is to be proved against the person accused. If this be stated such pleading is sufficient to give the court jurisdiction, and if the accused requests no further information, it is sufficient to warrant and sustain a trial and judgment. If, however, the defendant does not request information as to the transaction to be proved, e. g., if he wishes to know the name of his victim or description of property taken or injured, the first pleading may be supplemented by another or other pleadings known as "bills of particulars." There is nothing contained in the act to prevent the stating of the transaction in the first pleading and the expectation is that under Section 6 such information will usually be found in the first pleading. The permissive use of supplemental pleadings does away with the necessity which existed at common law of recommencing the entire proceedings.

The penal codes of New Zealand and Canada, which are almost exactly the same and are adaptations of the code proposed for England by H. L. Stephen and approved by the Law Barons, [see Report of Committee E in JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, Vol. 1, p. 589 (1910).] provide for this system of criminal pleading, as does the Criminal Procedure Code of India.

Only one American state has adopted a system even approximating the system here proposed. That state is Massachusetts (R. L. 1902, ch. 218), the statute of which has been closely followed in this act.<sup>2</sup>

WILLIAM H. MIKELL, Chairman.

#### INTERPRETATION.

SECTION 1.—In this act:

The singular number includes the plural and the plural includes the singular.

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<sup>2</sup>The committee wishes to acknowledge the valuable assistance rendered by L. P. Scott, Esq., Gomen Memorial Fellow in the Law School of the University of Pennsylvania, in the preparation of this act.

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The masculine gender includes the feminine and neuter genders.

The words "person," "accused" and similar words include, unless a contrary intention appears, public and private corporations.

The term "act" or "doing of an act" includes "omission to act."

The word "property" includes any matter or thing upon or in respect to which any offense may be committed.

The word "indictment" includes information, presentment, complaint and any other formal written accusation as well as indictment.

The word "indictment," unless a contrary intention appears, includes any count thereof.

The term "writing," "written," and any term of like import includes words printed, painted, engraved, lithographed, photographed or otherwise copied, traced or made visible to the eye.

The term "the court," unless a contrary intention appears, means the court before which the trial is had.

The term "the offense" means the specific offense constituted by the acts or omission of the accused, as distinguished from the term "the transaction," which means the particular acts, facts and circumstances which distinguish the offense committed from other offenses of the same nature. Thus robbery, murder and larceny are different "offenses" and the robbery of C. D. and the robbery of E. F. are different "transactions."

**SECTION 2.—Caption.**—Any defect, error or omission in the caption or commencement of an indictment may be amended, but if not amended is cured by a verdict.

It is unnecessary to allege that the grand jurors were impanelled, sworn or charged, or that they present the indictment upon their oaths or affirmations.

**SECTION 3.—Conclusion.**—The indictment need contain no formal conclusion except such conclusion as is required by the constitution of the state.

**SECTION 4.—Form.**—The indictment may be substantially in the following form:

In the (here give the name of the court) \* \* \* term, 19 .  
(here give the name of the body politic) vs. (here give the name or description of the accused).

The grand jury of the county of.....do present that (here give name or description of the accused) (here set forth the offense and transaction according to the rules hereinafter enunciated).

**SECTION 5.—Validity of Indictment.**—Every indictment is valid which indicates the offense for which the accused is being prosecuted in one or more of the following ways:

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(1) The indictment may indicate the offense by using the specific name given to the offense by the common law or by a statute.

(2) The indictment may indicate the offense by stating so much of the definition of the offense either in terms of common law or of the statute defining the offense or in terms of substantially the same meaning as is sufficient to give the court notice of what offense is intended.

Every indictment which indicates an offense in one or more of the above ways shall be considered to allege that every condition required by law to constitute the offense indicated was fulfilled in the particular case.

The words and phrases used in any indictment to indicate an offense shall be deemed to have been used in the sense attached to them by the law under which the offense is punishable.

SECTION 6.—Sufficiency of Indictment.—Every indictment is valid and sufficient which indicates the offense under Sec. 5, and contains so much detail of the circumstances of the transaction and such particulars as the person (if any) against whom and the thing (if any) in respect to which the offense was committed as are necessary to identify the transaction and to give the accused reasonable notice of the facts.

No indictment which indicates the offense under Sec. 5 shall be quashed, set aside, or dismissed, nor shall any demurrer thereto be sustained on the grounds that it fails to identify the transaction, but the accused shall in such cases be entitled to a bill of particulars in accordance with the provisions of Sec. 8.

SECTION 7.—Forms for Specific Offenses.—The following forms may be used in the cases in which they are applicable, but any other forms authorized by this or any other law may also be used:

Adultery.

A. B., a married man, committed adultery with C. D., or A. B. committed adultery with C. D., a married woman.

Affray.

A. B. and C. D. made an affray.

Assault.

A. B. assaulted C. D.

Assault and Battery.

A. B. committed an assault and battery upon C. D.

Assault with Intent.

A. B. assaulted C. D. with intent to murder, or kill, or rob, or maim him (as the case may be).

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### Arson.

A. B. committed arson by burning the dwelling house of C. D.  
Attempt.

A. B. attempted to steal from C. D. A. B. attempted to commit larceny of the goods of C. D. A. B. attempted to commit burglary of a building belonging to C. D.

### Burglary.

A. B. committed burglary of the house of C. D.

A. B. broke and entered the dwelling house of C. D. in the night time with intent to commit larceny, or murder, or robbery therein (as the case may be).

### Conspiracy.

A. B. and C. D. conspired together to murder E. F., or to steal the property of E. F., or to rob E. F. (as the case may be).

### Forgery.

A. B. forged a certain instrument purporting to be a promissory note (or describe instrument or give its tenor or substance).

### Larceny, Embezzlement and False Pretences.

A. B. stole from C. D. one horse of the value of more than one hundred dollars.

### Murder.

A. B. murdered C. D. (add a statement of the degree of murder if murder in the first degree is not intended to be charged).

### Manslaughter.

A. B. killed C. D. (add a statement of the degree or form of manslaughter if the highest degree or form of manslaughter is not intended to be charged).

### Perjury.

A. B. appeared as a witness in a case between C. D. and E. F. being heard before the (set forth the tribunal) and committed perjury by testifying as follows (set forth the testimony).

### Rape.

A. B. raped or ravished C. D.

### Robbery.

A. B. robbed C. D.

**SECTION 8.—Bills of Particulars.—(a)** When an indictment indicates an offense in accordance with Sec. 5 but does not inform the accused of the nature and cause of the accusation against him, the prosecuting officer may of his own motion, and shall when ordered by the court, which in all cases shall so order at the request of the accused, file a bill of particulars as may be necessary to give the accused information of the nature and cause of the accusation against him.

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(b) When information not set out in the indictment or in any previous bill of particulars, or not given to the accused in the course of the proceedings against him is desirable for the defense of the accused upon the merits of the case, the prosecuting officer may of his own motion or on request of the accused, and shall upon being ordered by the court, which may so order of its own motion or on motion of the accused, file a bill of particulars of such matters. In determining whether further information and if so what information is desirable for the defense of the accused upon the merits of the case, the court shall consider the whole record of the case and the entire course of the proceedings against the accused.

Supplemental bills of particulars may be filed under conditions above stated.

Each bill of particulars furnished shall amend the indictment and each and every previous bill in all matters alleged therein in order to identify the transaction in which an inconsistency, repugnancy or more detailed allegation appears.

When any bill of particulars as aforesaid is delivered to the court, it shall be filed with the indictment, and a copy thereof given to the accused upon his request.

When any bill of particulars as aforesaid is delivered the trial shall proceed in all respects as if the indictment had been amended in conformity with such bill of particulars.

SECTION 9.—Quashing the Indictment.—If the statement of the particulars in any bill of particulars furnished under Sec. 8 is inconsistent with the commission of the offense indicated in the indictment, or shows on its face that an indictment for such offense is barred by the Statute of Limitations, the court may quash the indictment unless the prosecuting officer shall file another bill of particulars which so states the transactions as to show that the transaction constitutes the offense indicated in the indictment, and that it is not barred by the Statute of Limitations.

SECTION 10.—Name of Person Accused.—In any indictment or bill of particulars it is sufficient for the purpose of identifying the accused to state his true name, to state the name, appellation or nickname by which he has been or is known, to state a fictitious name, or to describe him as a person whose name is unknown or to describe him in any other manner. In stating the two names or the name by which the accused has been or is known or a fictitious name, it is sufficient to state a surname, a surname and one or more Christian name or names, or a surname and one or more abbreviations or initials of a Christian name or names.

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If the accused be a corporation, it is sufficient to state the true corporate name or any name or designation by which it has been or is known. This is a sufficient averment that the corporation is a corporation and that it was duly incorporated according to law.

If the court before which the prisoner is arraigned or called upon to plead is satisfied by affidavit and hearing thereof or by other means that the person arraigned or called upon to plead is not the person intended to be indicted, it shall discharge such person from custody under such indictment.

If in the course of the proceeding the true name of a person indicted otherwise than by his true name is disclosed by the accused or by the evidence, the court shall on motion of the accused or of the prosecuting officer, and may without such motion, insert the true name of the accused wherever his name appears otherwise in the indictment and record, and the proceedings shall be continued against him in his true name.

No indictment or bill of particulars need state the addition, degree, estate, mystery, occupation, title or residence of the accused.

In no case is it necessary to aver or prove that the true name of the accused is unknown to the grand jury.

**SECTION 11.—Time.**—The indictment need contain no direct allegation of the time of the commission of the offense except such as is necessary to indicate the offense under Sec. 5.

The allegation of the indictment that the accused committed the offense shall in all cases be considered an allegation that the offense was committed before the finding of the indictment, after it became an offense, and within the period of limitations prescribed by law for the prosecution of the offense.

All allegations of the indictment and bill of particulars shall, unless properly stated otherwise, be considered to refer to the same time.

**SECTION 12.—Place.**—The indictment need contain no direct allegation of the place of the commission of the offense except such as is necessary to indicate the offense under Sec. 5.

The allegation of the indictment that the accused committed the offense shall in all cases be considered an allegation that the offense was committed within the territorial jurisdiction of the court.

All allegations of the indictment and bill of particulars shall, unless properly stated otherwise, be considered to refer to the same place.

**SECTION 12.—Means.**—The indictment need contain no allegation of the means by which the offense was committed except such as is necessary to indicate the offense under Sec. 5.



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**SECTION 14.—Value and Price.**—The indictment need not allege the value or price of any property unless an allegation thereof is necessary to indicate the offense under Sec. 5, and in such case it is sufficient to aver that the value or price of the property equals or exceeds the certain value or price which determines the offense. The facts which give the property such value need not be alleged.

**SECTION 15.—Ownership.**—It is not necessary to allege ownership of any property mentioned in an indictment unless such allegation is necessary to indicate the offense under Sec. 5.

In all cases in which an allegation of ownership of any property in an indictment or bill of particulars is supported by proof of a right of possession of such property any statement in the indictment or bill of particulars which implies possession of such property by such person is a sufficient allegation of ownership.

**SECTION 16.—Intent.**—In an indictment in which it is necessary for the purpose of indicating the offense under Sec. 5 to allege an intent to defraud or injure, it is sufficient to allege generally an intent to defraud or injure without alleging an intent to defraud or injure any particular person.

**SECTION 17.—Characterization of Act.**—The indictment need not allege that the offense was committed or the act done "feloniously" or "traitorously" or "unlawfully" or "with force and arms" or "with a strong hand" nor need it use any phrase of like kind otherwise to characterize the offense, nor need it allege that the offense was committed or the act done "burglariously," "wilfully," "knowingly," "maliciously," "negligently," nor need it otherwise characterize the manner of the commission of the offense unless such description is necessary to indicate the offense under Sec. 5.

The indictment need not contain the words "as appears by the record" or any other words of similar import.

The indictment need not allege any matters not required to be proved.

**SECTION 18.—Descriptive Allegations (General).**—In an indictment in which it is necessary for the purpose of indicating the offense under Sec. 5 to describe any person, place or thing, it is sufficient to describe such person, place or thing by any term which in common understanding embraces such person, place or thing and in common understanding does not include persons, places or things which are not by law the subject of or connected with the offense.

**SECTION 19.—Name of Person Other Than Accused.**—In any indictment or bill of particulars furnished under the provisions of subsection (a) of section 8 of this act, it is sufficient for the purpose of identifying any person other than the accused to state his true name,

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to state the name, appellation or nickname by which he has been or is known, to state a fictitious name, to state the name of an office or position held by him, to describe him in any manner or to describe him as "a certain person" or by words of similar import. In stating the true name of such person or the name by which such person has been or is known it is sufficient to state a surname or a surname and one or more Christian name or names or a surname and one or more abbreviations or initials of a Christian name or names.

It is sufficient for the purpose of identifying any group or association of persons, not incorporated, to state the proper name of such group or association (if such there be), to state any name or designation by which the group or association has been or is known, to state the names of all the persons in such group or association or of one or more of them, or to state the name or names of one or more persons in such group or association, referring to the other or others as "another" or "others."

It is sufficient for the purpose of indentifying a corporation to state the corporate name of such corporation, or any name or designation by which such corporation has been or is known.

It is not necessary for the purpose of identifying any group or association of persons or any corporation to state the legal form of such group or association of persons or of such corporation.

In no case is it necessary to aver or prove that the true name of any person, group or association of persons or corporations is unknown to the grand jury.

If in the court of the trial the true name of any person, group or association of persons, or corporation identified otherwise than by the true name is disclosed by the evidence, the court shall, on motion of the accused, and may without such motion, insert the true name in the indictment or bill of particulars wherever the name appears otherwise.

**SECTION 20.—Property Described as Money.**—In an indictment or bill of particulars furnished under the provisions of sub-section (a) of section 8 of this act, for larceny, embezzlements, robbery, obtaining property by false pretences, receiving stolen property or for any other criminal conversion or misappropriation of property, where the offense relates to currency, treasury notes, certificates, banknotes and other securities intended to circulate as money, and promissory notes, checks, drafts, bills of exchange, postal orders, and all other negotiable securities for debt or evidence of debt or any of them it is sufficient to describe the same or any of them as money, without specifying the particular character, number, denomination, kind, species, or nature thereof.

**SECTION 21.—Property Described as Funds.**—In an indictment

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or bill of particulars furnished under the provisions of sub-section (a) of section 8 of this act, for larceny, embezzlement, robbery, obtaining property by false pretences, receiving stolen property or for any other criminal conversion or misappropriation of property where the offense relates to certificates of stock, stocks, bonds, bills of lading, mortgages and all other non-negotiable securities for debt or evidence of debt or property, or any of them it is sufficient to describe the same or any of them as funds, without specifying the particular character, number, denomination, kind, species or nature thereof.

**SECTION 22.—Description of Written Instrument.**—Whenever in an indictment or bill of particulars furnished under the provisions of sub-section (a) of section 8 of this act, an allegation relative to any instrument which consists wholly or in part of writing or figures, pictures or designs is necessary, it is sufficient to describe such instrument by any name or description by which it is usually known or by its purport without setting forth a copy or facsimile of the whole or any part thereof.

**SECTION 23.—Description of Written Matter.**—Whenever in an indictment or bill of particulars furnished under the provisions of sub-section (a) of section 8 of this act, an averment relative to any spoken or written word or to any picture is necessary, it is sufficient to set forth such spoken or written words by their general purport or to describe such picture generally without setting forth a copy or facsimile of such written words or such picture.

**SECTION 24.—Meaning of Words and Phrases.**—The words and phrases used in an indictment or bill of particulars are to be construed according to their usual acceptation, except words and phrases which have been defined by law or which have acquired a legal signification, which words and phrases are to be construed according to their legal signification and shall be sufficient to convey such meaning.

**SECTION 25.—Previous Convictions.**—Whenever it is necessary to allege a prior conviction of the accused in an indictment it is sufficient to allege that the accused was at a certain stated time, in a certain stated court, convicted of a certain stated offense, giving the name of the offense, if it have one, or stating the substantial elements thereof.

**SECTION 26.—Private Statutes.**—In pleading a private statute or a right derived therefrom it is sufficient to refer to the statute by its title and the day of its passage or in any other manner which identifies the statute and the court must thereupon take judicial notice thereof.

**SECTION 27.—Judgments.**—In pleading a judgment or other determination of, or a proceeding before any court or officer, civil or military, it is unnecessary to allege the facts conferring jurisdiction

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on such court or officer, but it is sufficient to allege generally that such judgment or determination was duly given or made or such proceedings had.

**SECTION 28.—Exceptions.**—No indictment for any offense created or defined by statute shall be deemed objectionable for the reason that it fails to negative any exception, excuse or proviso contained in the statute creating or defining the offense.

The fact that the charge is made shall be considered as an allegation that no legal excuse for the doing of the act exists in the particular case.

**SECTION 29.—Alternative Allegations.**—In an indictment or bill of particulars for an offense which is constituted of one or more of several acts, or which may be committed by one or more of several means, or with one or more of several intents, or which may produce one or more of several results, two or more of such acts, means, intents, or results may be charged in the alternative.

**SECTION 30.—Indirect Allegations.**—No indictment or bill of particulars is invalid or insufficient for the reason merely that it alleges indirectly and by inference instead of directly any matters, facts and circumstances connected with or constituting the offense, provided that the nature and cause of the accusation can be understood by a person of common understanding.

**SECTION 31.—Larceny and Stealing.**—The terms “larceny” and “stealing” when used in any indictment have each the following signification: The criminal taking, obtaining or converting of personal property; including all forms of larceny, embezzlement and obtaining by criminal false pretence.

In an indictment for larceny, embezzlement, or obtaining by criminal false pretence, it is sufficient to allege that the accused stole the property which is the subject of the offense, and such indictment shall be supported by proof that the accused committed larceny of the property or embezzled it or obtained it by criminal false pretence.

**SECTION 32.—Libel.**—An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libelled of the defamatory matter on which the indictment is founded, but it is sufficient to state generally that the same was published concerning him.

**SECTION 33.—Perjury and Kindred Offenses.**—An indictment or bill of particulars for perjury or for subornation of, solicitation, conspiracy or attempt to commit perjury is sufficient which indicates the offense for which the accused is prosecuted, the nature of the controversy in respect of which the offense was committed and before

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what court or officer the oath was taken or was to have been taken, without setting forth any part of the records or proceedings with which the oath was connected, and without stating the commission or authority of the court or other authority before whom the perjury was committed or was to have been committed or the form of the oath or affirmation or the manner of administering the same.

**SECTION 34.—Homicide.**—In an indictment for murder it is sufficient to charge that the accused murdered the deceased, adding a statement of the degree of murder, if murder in the first degree is not intended to be charged, and in an indictment for manslaughter it is sufficient to charge that the accused killed the deceased, adding a statement of the degree or form of manslaughter if the highest degree or form of manslaughter is not intended to be charged.

**SECTION 35.—Principal and Accessory.**—Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures counsels, aids, or abets in its commission, may hereafter be prosecuted, indicted, tried, and on conviction shall be punished as if he had directly committed such offense.

**SECTION 36.—Repugnancy.**—No indictment is invalid by reason of any repugnant allegation contained therein, provided that an offense is indicated under Sec. 5.

**SECTION 37.—Surplusage.**—Any allegation herein stated to be unnecessary, may, if contained in any indictment, be rejected as surplusage.

**SECTION 38.—Defects, Variances and Amendment Thereof.**—No indictment is invalid because of any defect or imperfection in or omission of any matter of form only, nor because of any miswriting, misspelling or false or improper English, nor because of the use of foreign words or signs, symbols or abbreviations, nor because of any other defect, imperfection or omission in the manner of charging the offense, or describing the transaction, provided that the indictment indicates an offense in accordance with the provisions of Sec. 5.

No variance between those allegations of an indictment or of any bill of particulars, which identify the transaction under Sec. 5, whether amended or not, and the evidence offered in support thereof shall be grounds for the acquittal of the accused.

The court may at any time amend the indictment or bill of particulars in respect to any such defect, imperfection or omission as above stated and may at any time amend the indictment or bill of particulars as to any such variance as above stated to conform to the evidence.

If the court is of the opinion that the accused has been actually

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misled and prejudiced in his defense upon the merits of any such defect, imperfection or omission or by any such variance the court may of its own motion, unless the accused objects, or on motion of the accused postpone the trial, to be had before the same or another jury, on such terms as the court sees fit. In determining whether the accused has been misled and prejudiced in his defense upon the merits the court shall consider all the circumstances of the case and the entire course of the prosecution.

No motion made after verdict nor writ of error nor appeal based on any such defect, imperfection or omission or based on any such variance shall be sustained unless it be affirmatively shown that the accused was in fact prejudiced in his defense upon the merits and a failure of justice has resulted.

**SECTION 39.—Misjoinder, Multiplicity and Multifariousness.**—No indictment shall be quashed, set aside or dismissed nor shall any demurrer thereto be sustained for any one or more of the following defects merely: (First) That there is a misjoinder of the parties accused. (Second) That there is a misjoinder of the offenses charged in the indictment, or duplicity therein. (Third) That any uncertainty or multiplicity exists therein.

If the court be of the opinion that the first and second defects or either of them exists in any indictment it may sever such indictment into separate indictments or into separate counts as shall be proper.

If the court be of the opinion that the third defect exists in any indictment it may order that a bill of particulars be filed in accordance with Sec. 8.

No motion made after verdict nor writ of error nor appeal based on the defects enumerated in this section shall be granted or sustained unless it be affirmatively shown that the accused was in fact prejudiced in his defense upon the merits and a failure of justice has resulted.

**SECTION 40.—Amendment After Verdict.**—The accused and the prosecuting officer are entitled upon motion made by either after verdict and before sentence or discharge to have the indictment amended so as to state the acts, facts and circumstances of the offense and the names or descriptions of persons, places and things connected therewith and the time and place of the commission of the offense as proved by the evidence, in such a manner that the indictment shall without evidence, aliunde, be such evidence of the prosecution as to bar a subsequent prosecution for the same offense.

**SECTION 41.—Interpretation of the Act.**—Nothing in this act shall be interpreted in such a manner as to make invalid any indictment at present valid nor to make improper any verdict at present proper.

## THE LABORATORY IN THE STUDY AND TREATMENT OF CRIME<sup>1</sup>

V. V. ANDERSON.<sup>2</sup>

Many factors are combining to bring about a changing attitude towards certain social problems, particularly crime. Possibly the frequency of recidivism has had much to do with it. Certainly there has arisen in the minds of many serious thinkers a suspicion as to the adequacy of present methods of handling offenders. Possibly the growing unrest of the age, the increasing desire for greater efficiency, lies at the bottom of it all. However, this we know, that lessons already learned by workers in other fields have served to cause earnest students of crime to stop and to consider whether, after all, the old and beaten paths are the best.

Certain fields of human knowledge have made immense strides; notably modern medicine. There has been a complete change of front on the part of this science; the inclination to treat symptoms has given way to a tendency to search out the cause or causes, with a view to as complete eradication as possible. That tendency to treat symptoms without any real knowledge of the underlying causes, which was such a serious element of failure in the treatment of physical ailments by the medical profession, has given way to a recognition of the positive necessity of sound laboratory methods, and a willingness to base treatment on laboratory findings and research work, resulting in a far more rational basis of combating human ills.

This tendency to base treatment on a knowledge of the underlying causes promises in the treatment of crime, to bring about an evolution similar to that which has been accomplished in the treatment of disease. Society realizes more and more the positive necessity of studying the criminal as well as the crime. More and more are judges recognizing that there are considerations other than legal, and of as great importance, in handling offenders. One often hears the question asked,—What are the causative factors in this particular case? What does the particular individual need? How best can society be protected and the offender reformed? One notices a growing tendency among criminal jurists towards individualization, and a handling of offenders *in the light of what they are*, rather than what they have done. There is a feeling that what we recognize as crime may more often be treated pathologically than morally; as it is clearly more often the result of irresistible physical forces than the deliberately chosen end of voluntary moral action. There is a feeling that a large group of individuals, abnormal in mind and body, in whom there is a serious question as to whether they really know the nature and quality of the act which they have committed and for which they have been arraigned, demand in the name of common justice that a scientific estimate of their capacity, for what judges have been in the habit of calling “free moral action,”

<sup>1</sup>Read before The American Association for Clinical Criminology, St. Paul. Oct. 8, 1914.

<sup>2</sup>Director of the Psychopathic Laboratory, Municipal Court, Boston.

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be made. This is a crucial question, a question that Judges feel should be answered by the trained scientific observer, and in many instances only after prolonged and patient investigation.

This tendency suggests the establishment of laboratories and a corps of specially trained experts in our courts. Just this has been advised by Committee A of the Institute of Criminal Law and Criminology. The report of this committee contemplated the establishment of such criminalological laboratories in the Municipal Courts of our larger cities, that were to furnish "such a diagnosis of the criminal from psychological, neurological and sociological points of view, as might be of immediate practical aid to the judge who must sentence the defendant before the bar. It should furnish him with exhaustive knowledge of the individual case, in order that through his sentence he may adequately protect society, while doing the best that is possible for the prisoner as an individual." In general, the data supplied to the court by the laboratory will assist the judge in determining how he may best perform his protective service to society.

The research side of this work should not be lost sight of. It was the purpose of the committee "that the laboratory serve to collect a body of anthropological, psychological, neurological and sociological data concerning criminals that will ultimately be of great scientific value."

This contemplates a forward step in socializing our courts, and means that the absurdity of interpreting as crime the reactions of the countless thousands of mentally weak of varying degrees of abnormality, who are incapable of understanding and measuring up to the dictum of society, will give way to an appreciation of the underlying causative factors in their conduct and a realization of the mental deficiency or other disorder that often exists; that the imbecile, or feeble-minded man (man in physical years, but boy in mental capacity), is unable to understand his obligations to society and will naturally fail to obey its mandates; that sentencing him to a penal institution for a short term of punishment presupposes that he exercises a free will in the line of evil—a thing quite impossible—and fails in any sense to meet the situation; he is soon returned to society unmodified and after a short term of freedom he is again found in the courts, and again sentenced. This useless process is kept up over and over again. The pity of it all is that in the meantime he is liable to have become a hopeless pervert; all possible chance for improvement in the proper type of custodial institution, all possible chance for habit formation through industrial education, and for character building, has been lost.

After the report of Committee A had been made a certain development along these lines began to take shape in Boston. Mr. Albert J. Sargent, the Chief of the Probation Department of the Municipal Courts, who had long felt the need of just such a laboratory in the courts, began to interest himself in the matter, with the result that soon the Chief Justice, Hon. Wilfred Bolster, after carefully considering the question submitted it to the judges, and in September of



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last year the work in which we are now engaged was initiated, in connection with the Probation Department.

From the first we recognized the impossibility of examining anything like the number of individuals daily passing through the courts who needed a careful mental and physical examination before their cases could be properly disposed of. So instead of taking the initiative, and picking out our cases, we decided to have the judges and probation officers do this and have them send us what they considered their serious problems. This course we have continued to pursue. We quickly saw our good fortune in being in a court where there was a corps of very efficient probation officers,—men and women whose thorough manner of handling their problems was most pleasing to us. Their keen insight had already prepared the way for our work, and they welcomed us with an eager co-operation. Looking back over the year's work one can but feel deeply grateful for their kindly interest and most intelligent assistance. Most of all we thank their Chief, Mr. Albert J. Sargent. His thoroughly constructive attitude has been to us the most hopeful part of the entire situation.

Naturally, our first concern was the tools with which we had to work and the methods of getting at our problems. The recognition of the insane and the feeble-minded furnished no great difficulty, but the great borderline field lying between needed the development of accurate methods for investigation. On the one hand we had the unstandardized methods of the neurologist and the usual diagnostic measures of the psychiatrist. On the other hand the psychological laboratory offered us methods of experimental study by means of which the individual differences of men could be tested in a manner far beyond anything which common sense and social experience could suggest. That same accuracy shown by the physiologist in his investigation of bodily processes was to be found in the psychological laboratories in studying mental processes, but no coordinated system of tests for the adult individual were at hand,—nothing that could be lifted out bodily and be made to do the service we required for the study of criminals.

Healy had already evolved practical methods for estimating certain abilities of juvenile delinquents. We had been using these tests since the opening of the Psychopathic Hospital in Boston in the investigation of all the borderline cases sent to the hospital, including Juvenile Court cases, Industrial School girls, delinquents referred by various social agencies, backward children from the schools and others, with more satisfying results than could be obtained from any other methods. In approaching adult criminals, however, many difficulties were at once apparent that forced upon us the conviction that we must develop our own methods for studying these individuals. The Binet-Simon Tests we hardly thought of seriously in connection with our work, because we realized, after using them for several years, that they were quite inadequate for the purposes for which we are now called upon to use tests. Intended, as they are, by their authors for the classification of school children, they are not adequate to

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measure the degree of development of the mental processes of adult individuals. We are here dealing with such a complexity of factors, that, as our experience had long ago taught us, we would get an intellectual level in no sense representative of the true one if we relied upon the use of these tests.

The innumerable alcoholics would too often appear feeble-minded, for it is startling how many come between 8 and 12 years by the Binet scale, but for occasional intellectual flashes that are, in many cases, beyond the standard to which the feeble-minded could aspire. They indicate a maturity of mind often quite in keeping with their class in life. Their low level is explained by a mental deterioration, an insidious impairment of all the senses, and a degeneration of the more complex mental functions, due to alcohol.

Other "derelicts" almost invariably show a lower level than their original status because of a deterioration due to their manner of living: to discouragement, depression, and other factors. They are unable to respond to the Binet test in a satisfactory manner and are included amongst the feeble-minded. But this is a serious matter for it means all the difference in the world in our outlook on the general social situation. If their deficiency is native, then the steps to be taken along the lines of prevention are quite different from those to be taken if it is acquired.

Our first step in Boston, therefore, was to standardize for our use certain methods of the neurologist and psychiatrist, but our principal task was the development of mental tests for adults.

It seemed to serve our purpose best to use the scale method, and in this we sought not only a quantitative estimate of mental processes but a qualitative one as well. That mental tests serve their best purpose in enabling us to watch the mind in action, has always seemed to me of greater importance than their service as measuring rods. The scale consists of twenty points, and allows a credit of 100. The tests selected were considered best suited to bring into play those mental functions that characterize the adult. These tests are being given in connection with the Binet tests on every case, and we hope to make some comparative studies along these lines that will be of value.

In addition to a measurement of the mental capacity there must be an estimate of his traits of character; a study of his personality. It was quite evident that the qualities here involved were not capable of direct experimental measurement, so that the only approach to the quantitative character that science demands consisted in an evaluation of comparative judgments about them. In this way have we sought to develop methods that would give us an estimation of our individual's ethical relations and enable us to examine into those qualities which constitute his value in relation to his fellows.

It has seemed to us distinctly worth while to arrange a chart for the recording of certain anthropological, psychological, neurological and sociological data, which when collected on a sufficient number of individuals may lead to a better understanding of the crime problem.

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This we have done, after much time-consuming labor, so that now at the end of a year we feel that we are just beginning to get ready for our real work. In the meantime, we have all the while been doing plenty of clinical work, the courts being full of the richest material for investigation and study.

In a paper of this type it is impossible to go into many details showing the results of the changing attitude from punishment to treatment, to which we referred above, but a few illustrative cases may be worth while.

The following case belongs to a type that for the purpose of prevention should be got hold of early.

E. W., age 20, arrested for larceny. Owing to persistent and uncontrollable crying the judge at the suggestion of the probation officer sent her to us for an examination. We found a well nourished young girl with physical examination negative except for choreiform movements. Mental examination, however, showed defect in memory, impairment in fund of general knowledge, some hallucinations, hypnagogic in character. She was greatly depressed, cried bitterly, was unwilling to talk much, wanted to get by herself. Such a mental condition had been quite marked for the last month, the change taking place at the time of having trouble with a sister, since which time she had been greatly depressed, crying considerably. She had noticed a distinct change in herself, and often felt like committing suicide. The Judge very readily accepted the idea of treatment in the place of punishment, and we sent her to the Psychopathic Hospital, where the diagnosis of dementia praecox was confirmed, and the girl detained for observation and treatment. Her condition gradually began to clear up and finally she was tried out on a visit home. She began slowly to adjust herself to conditions, went back to work, is now in good health, earning good wages, and doing nicely. The fact is, the girl was not responsible for the crime she committed and had she been confined in a penal institution would have doubtless deteriorated and soon have become an advanced case of dementia praecox. She represents a group of cases that we are finding it quite important to get at in the earliest beginnings of their mental trouble if by proper preventive measures we are to ward off an oncoming dementia.

Another type is represented by E. C., age 27, street car motorman, arrested for larceny. The Judge not feeling satisfied with answers he gave as to the motives of his conduct, sent him to us for investigation. He not only had committed larceny, but such accidents as driving his car into other cars repeatedly and imperilling passengers were attributed to him. Physical examination showed neurological signs suggestive of general parësis. Mentally he showed the classical picture of general paresis. The question of his mental soundness was placed before the Judge, who readily substituted for the idea

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of punishment that of treatment. He was sent to the Psychopathic Hospital with the provisional diagnosis of general paresis. At the hospital the Wasserman was found positive for both blood and spinal fluid, and from there he was committed to Taunton. We have had several individuals of this type, men charged with forgery, with assault and battery, with larceny, etc., whom it is quite important for society to get hold of for proper detention and treatment rather than a few week's punishment, not only for their own good but especially for society's protection.

Of course there is a lot of substandard, inferior and defective individuals needing a special type of treatment, rather than the ordinary routine probation and short term prison sentence. There are some who make good first impressions, appear superficially bright, are glib talkers, and deceive even the elect, whom mental examinations show to be of low grade intelligence and quite incapable of conducting themselves properly in a normal environment; and then on the other hand there are many who appear much worse than they really are, who give the impression from personal appearance of being feeble-minded, but who as a result of mental examination show surprising mental capacity.

W. P., age 30, was of this latter type. Arrested repeatedly and given various terms of penal treatment, he was brought into court the time we saw him for drunkenness and lewd and lascivious cohabitation. Various court and jail officials knew him and spoke to us of his being an imbecile. Physical examination showed results in facial muscles of a paralytic condition in childhood; considerable ptosis of upper eyelids, relaxation of lower jaw and drooping of mouth; in fact, he did have the general appearance of an imbecile. Mental examination however, was surprising, for he had good mental capacity. We found his mother was of low grade morally. They lived in a vicious environment, and influences in general were bad. The court saw fit, as a result of our report, to put him on probation. The probation department secured him employment, and he was sent to the country on a chicken farm. He persisted in coming down to see me every week, and now after a year has a good position with a store in Boston, making \$10.00 to \$15.00 a week. He moved with his mother to a better neighborhood, and has had no return to his old bad habits.

One could go on multiplying instances of different types and merely be elaborating what is obvious, that there are a lot of deteriorating individuals in the courts; men and women, who have lost something they once possessed, or who never possessed very much; who in the past have been considered confirmed criminals, but who today are not to be looked upon as hopeless incurables who need permanent segregation, until society has definitely failed in the more constructive measures of physical, mental and intensively directed social treatment.

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A general picture of the situation as regards the most serious problems in the court may be obtained from the following table which consists of a report of the diagnosis of my last 350 cases:

Mental Defectives .....	31	1.7 per cent
Dementia Praecox .....	3	5-7 per cent
Constitutional Psychopaths .....	24	2-7 per cent
Sub Normal .....	20	2-7 per cent
Hysteria .....	0.8	per cent
Psychasthenia .....	0.2	per cent
Epilepsy .....	3	5-7 per cent
Alcoholic Hallucinosis .....	0.6	per cent
General Paresis .....	1	3-7 per cent
Cerebro Spinal Syphilis.....	0.6	per cent
Senile Dementia .....	1	5-7 per cent
Unclassified Psychoses .....	3	1-7 per cent
Manic Depressive Insanity.....	0.8	per cent
Normal .....	7	3-7 per cent

Here we have a reasonably larger group of defectives, individuals who started life with the handicap of retarded mental development. But the greater proportion are deteriorating cases, individuals showing evidence of an acquired condition rather than native.

To be sure the constitutional psychopath has a poor soil to begin with; his nervous system is unstable, easily upset and less resistant to the battles of life than the normal, but the deterioration in these cases was in the majority of instances preventable. Sufficient facts are at hand to indicate that certain educational measures, physical treatment, and training in early life can go far towards preventing their becoming stranded later on.

There is a great horde of school children who are not up to par in their mental organization who when subjected to the vicissitudes of life as adults are especially liable to develop psychoses. These are the psychopaths, and they are usually completely overlooked. The teacher and medical examiner recognizes that they are neither defectives nor normal children; that they are not adjustable to the routine requirements of school and cannot be fitted into the ordinary regime, and usually let the matter drop there. Their anomalies of character and mental instability enable them to cope no better with the complex demands of life than it did with the simpler ones of life's training school; so they soon join that great body that Judge Gemmill has so well termed "The Army of Defeat," and find their way into almshouses, prisons, insane hospitals and other institutions. What we need to bear in mind here is the efficiency of preventive measures.

The 350 cases that we have above referred to came from the First and Second Criminal Sessions of the Municipal Courts, as well as a few from the Domestic Relations Court. There were 140 men and 210 women. The following tables show offences for which they were arraigned in court and the mental condition found.

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## TABLE I ANALYSIS OF 140 MEN'S CASES

	Drunkennes	Larceny	Attempt at Larceny	Assault & Battery	Offences against Chastity	Non-Support	Vagrancy	Stub. Child	Threats	Evading Cab Fare	Forgery & Uttering	Mal. Mischief	Trespassing	Vio. Drug Law	Felonious Assault	TOTALS	Percentage
Ment. Defectives	8	9	1	1	2	2	2	1	3	1	1	1	1	1	1	23 or 16	3-7%
Cons. Psycho.	25	3	3	3	14	1	1	1	1	1	1	1	1	1	1	49 or 35	%
Sub-Normal	9	5	2	2	2	1	1	1	1	1	1	1	1	1	1	24 or 17	1-7%
Dem. Praecox	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	7 or 5	%
Epileptics	5	1	1	1	1	1	1	1	1	1	1	1	1	1	1	6 or 4	2-7%
Gen. Paresis	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	5 or 3	4-7%
Cer. Sp. Syphilis	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2 or 1	3-7%
Al. Hallucinosia	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1 or 5	7%
Psychasthenia	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1 or 5	7%
Senile Dementia	2	2	1	1	1	1	1	1	1	1	1	1	1	1	1	3 or 2	1-7%
Unclasa. Psychoses	2	2	1	1	1	1	1	1	1	1	1	1	1	1	1	6 or 4	2-7%
Normal	5	4	1	1	1	1	1	1	1	1	1	1	1	1	1	13 or 9	2-7%
TOTALS	62	25	1	9	1	21	5	1	3	1	1	2	1	6	1	140	100.00%

## TABLE II ANALYSIS OF 210 WOMEN'S CASES

	Drunkness	Larceny	Assault & Battery	Offences against Chastity	Vagrant	Stub. Child	Threats	Idle & Dis.	Profanity	Vio. Drug Law	TOTALS	Percentage
Ment. Defectives	46	4	25	1	3	2	2	1	4	86 or	40.95%	
Cons. Psycho.	29	4	2	1	1	1	1	1	1	36 or	17.14%	
Sub-Normal	11	12	1	15	2	1	1	1	1	47 or	22.38%	
Dem. Praecox	3	3	1	3	1	1	1	1	1	6 or	2.86%	
Epileptics	3	1	3	1	1	1	1	1	1	7 or	3.33%	
Hysteria	2	1	1	1	1	1	1	1	1	3 or	1.43%	
Al. Hallucinosia	1	1	1	1	1	1	1	1	1	1 or	.48%	
Manic Dep. Insanity	2	1	1	1	1	1	1	1	1	3 or	1.43%	
Sen. Dementia	3	1	1	1	1	1	1	1	1	3 or	1.43%	
Unclass. Psychoses	3	2	1	1	1	1	1	1	1	5 or	2.38%	
Normal	2	3	6	1	1	1	1	1	2	13 or	6.19%	
	105	29	2	52	2	5	2	4	1	8	210	100.00%

A few interesting points stand out in a comparative study of these tables. Take the record of the men offenders: We find that only 16% were mental defectives, while 35%, or more than twice as many, were psychopaths. Among the men offenders arrested for drunkenness there were 62 cases. Of these 12.9% were mental defectives, while 40.3% were constitutional psychopaths.

From the Domestic Relations Court there were 21 individuals arrested for non-support. Of these 9.5% were mental defectives while 66 $\frac{2}{3}$ % were constitutional psychopaths. Apparently in the Domestic Relations Court the problem of the mental defectives is rather insignificant. The psychopath, however, looms up in large proportions.

A study of our women offenders gives an entirely different

picture. Whereas there were only 16% mental defectives amongst the male offenders, among the female offenders there were 40.95% mental defectives. There were 35% constitutional psychopaths among the male but only 17.14% among the female.

Of the women arrested there were 105 cases of drunkenness. Of these 43.8% were mental defectives, and 27.62% constitutional psychopaths.

A study of those women arrested for offences against chastity shows that the mental defective is the serious problem. 48% were mental defectives; 28% were sub normal, while only 3.48% were psychopaths.

In general our studies bear out the conclusions of other investigators, in regard to women offenders, that they are differentiated from non criminals by a lack of intellectual development, that mental deficiency is the problem here.

In regard to criminals as a whole, however, they contradict certain reports, for the psychopath is almost as frequent as the defective, and among men recidivists is of larger magnitude.

We conclude that there is a type of individuals passing through our courts who form a group, of as serious proportions as the feeble-minded, who furnish as much if not more trouble to the social worker and probation officer than the defective, often suspected by the layman of being insane and diagnosed occasionally by experts as suffering from psychoses, or as mental defectives, defective delinquents, emotional defectives, moral imbeciles, and what not. These individuals when studied intensively by exact methods show no real defect in the intellectual field, they give no evidence of insanity, but seem to have certain anomalies of character, certain lack of personality adjustments; unstable, neurotic individuals whose adaptation is inadequate and inefficient. They easily become disordered under the influence of emotion, alcohol, etc.

We have to consider these individuals in the light of adjustment of their personality rather than in terms of development of intellectual processes. Their anti-social conduct is due less to their stupidity; less to their lack of understanding of the demands of a social organization and an inability to foresee the consequences of their acts, than it is to a lack of co-ordination of the proper mental functions. The impulse to do a thing may come with such force as to drive out all opposing ideas, or the checking ideas may come into action too slowly, or may be permanently at fault. It is quite possible that these individuals belong to the same group as the neuroses and psychoneuroses, rather than defectives. And it is further quite possible, as Adler suggests, that our laboratory investigators are going to find some metabolic disturbances as a basis.

It is hardly necessary to call attention to the seriousness of the problem of the defectives and the proper social steps that need to be taken, inasmuch as now there is a wealth of literature on the subject. However, I am constrained to remind you of certain facts.

The public is getting the idea on the one hand that a majority

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of criminals are mental defectives. On the other hand, it is hearing that feeble-mindedness is incurable. So that the problem that faces society is to segregate all these defectives permanently. This is going to be a much contested point and if the day of reckoning should come, would we be able to summon sufficient data to justify such conclusions? Are we convinced that all the evidence is in? On the contrary we all know that the last word *has not been said* from the standpoint of causation (and therefore of treatment). In fact, we have hardly touched on the subject from this side. Real scientific investigation of the question is only beginning, and we should be a little more cautious in speaking of the hopelessness of the situation.

As yet the pathologist and Bio-Chemist are to be heard from. The psychologist himself is going to dig a little deeper than merely to classify levels of intelligence. In fact, there is an immense field of research problems that will have to be worked out before any positive statements can be made.

In a series of 225 cases studied at the Psychopathic Hospital I called attention to the fact that 10% were specialized defectives, that is their deficiency instead of representing a halt in the stage of mental development corresponding to a certain level of mental age, was the expression of certain irregularities of mental makeup that consisted in a partial dropping out of some field of mental imagery.

Of the cases above referred to 42 $\frac{3}{4}$ % showed marked defect in auditory memory and imagery; 89% of whom measured so low in the scale as to leave little hope of benefit from educative measures; the other 11% gave every evidence of being remediable.

The remaining 57 $\frac{1}{4}$ % of this series showed defect in visual memory and imagery. Of these 25% (two-thirds of whom were congenital syphilitics) were very low in the scale and were distinctly unpromising; the other 75% showed excellent learning capacity in other fields than those having to do with visual imagery and memory, and showed every evidence of good capacity to profit by an intelligently directed, intensive method of instruction.

The interesting situation was this: All of these individuals were distinctly backward children and were members of classes for defectives. Our findings showed that of those distinctly defective in auditory memory and imagery 89% were apparently hopeless cases from the standpoint of education; but of those whose defect was in the visual field of memory and imagery 75% showed every evidence of ability to profit by properly directed educative measures.

The lesson that we wish to call attention to is that there is a certain percentage of children in the schools showing one or other of these defects, whose extreme backwardness may be due to a defect in auditory word memory or visual word memory, etc. The defect may be partial or extreme, and their apparent level in the scale of intelligence will depend upon the degree of severity of the defect.

Those having the defect in the auditory field are much lower and more hopeless than those having such a defect in the visual sphere.



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Stearns' findings bear this out, in that those who have auditory hallucinations show greater disturbance of consciousness than those who have visual hallucinations.

Educative measures might consist in making good the loss sustained from a certain field that is in arrears by intensive work on others. For instance, in case of visual memory defect, one would pay special attention to the auditory, motor, vocal-motor, etc.

If these findings are borne out by other studies we have an additional tool with which to wage our warfare against feeble-mindedness.

These and numerous other problems at the very root of crime are waiting to be attacked in our court laboratories that are going to be established; and for a long time yet knowledge of criminals will have to be handed out by the teaspoonful rather than by the bucketful. There will be no room for the faddist or misguided enthusiast, for the work will of necessity have to develop slowly; but this is quite clear, that in the creation of just such laboratories in the Municipal Courts of our larger cities lies the road to the establishment of a rational and scientific method of dealing with criminals. "You must first find out what they are before you can successfully cope with them."

## LABOR UNIONISM AND CONVICT LABOR.

E. T. HILLER.<sup>1</sup>

The present tendency toward public control and public use of prison labor is to a large extent the achievement of the political activity of organized labor. The question of convict labor and its relation in competition to free labor has grown increasingly important in recent years and is receiving increased prominence in the discussion and attempted legislation of trade unions. In the political and legislative propaganda many and varied demands are made looking toward the regulation of competition, rather than the abolition of penal labor, and toward the improvement of the methods of dealing with the delinquent and social offender. Among the specific measures for protecting the citizen mechanic against a menacing competition and the convict against exploitation, may be named the following points: Public control and public use of convict labor, restriction of occupations which may be introduced in prison industry, limiting the number of prisoners employed on marketable wares, limiting the hours of employment of convicts, preventing interstate shipment of prison-made goods, forbidding importation of raw or finished material upon which any penal labor has been bestowed, branding all prison-made goods, restricting the use of powerful machinery in prison industry, demanding hand processes so far as possible, and giving recognition to the right of the prisoner to healthful employment, humane treatment, receiving awards for his dependent family, and a new chance to make good as a citizen.

These points in the political and legislative program of organized labor represent the official attitude and demands. Individually and locally a great variety of opinions and sentiments, however, have been held; but the official utterances have never urged that prisoners be maintained in idleness, but have sought to regulate the displacement of citizen labor by convict labor and to minimize the evils of unequal competition between subsidized and low-plane prison labor and that of free citizens. The menacing effect of a subsidized and low-plane competition has been more or less clearly recognized by labor leaders and has been the chief motive for the opposition against the unregulated convict labor as it existed throughout the greater part of the last century. A second reason for this opposition is the moral injustice of impairing the means of livelihood of honest citizens by the labor of those who have violated the law of the state. A third rea-

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E. T. HILLER

son is the inhumane treatment of prisoners by private employers and contractors. For these reasons citizen mechanics have incessantly striven for state control and state use of convict labor during a period of more than three-quarters of a century, and extensive legislation in that direction has been effected in the last twenty-five years.

The specific demands made by free labor and the motives which prompted its agitation for the modification of former methods of employing convicts under the various methods of private control—the contract, lease and piece-price systems—can be understood only by a reference to the growth of the moral and penological principles and economic or industrial evolution of our country since Colonial times. The tracing of this development of penological and industrial methods in relation to the conflict between convict and free labor is the task undertaken in this study. The period surveyed is that of our industrial revolution, beginning near the opening of the nineteenth century; but a brief account will be given of the economic significance of convict labor in Colonial times as a background for the awakening and changes which came in the manner of imposing penal labor in the first quarter of the last century. The moral, philanthropic and penologic aspects of the question must receive some notice to give a fair representation of the problem involved in the conflict between convict and free labor, but they will be presented only incidentally to the main line of thought—the economic laws and origin of this competition, and the demands and political program of organized labor looking toward the control of prison industry. However desirable it might be to discover and trace the separate springs of action of labor unions in their political career it would be impossible to isolate and appraise the component interests and purposes, for life is a whole and the economic, selfish and altruistic motives of action cannot be altogether separated in description or practice. Hence no estimate will be made of the relative importance of the various motives which have influenced the attitude of free labor toward specific conditions of convict labor. It is sufficient to observe that labor unionism has been increasingly victorious in obtaining restriction and public control of prison industry, and, with the co-operation of penologists and reformers, has brought on a more humane treatment of convicts in the imposition of penal labor.

In tracing the relation of free labor to convict labor, three forces must be considered. On the one hand are the development of the methods of penal discipline and prison control and the growth of the industrial processes; on the other hand is the force of organized

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labor in its endeavor to protect its means of livelihood from unequal competition. We will hence discuss I. the development of the methods of punishing convicts by imposing compulsory labor as a substitute for other forms of punishments, especially during the nineteenth century, with a brief account of the conditions in the eighteenth century; II. penal labor as an industrial factor, comprising the development of the manner of employing convicts as affected by the industrial revolution, and the economic significance of prison labor as a source of competition with free labor; and III. the political activity of labor unionism in its endeavor to limit the extent and nature of the competition with the subsidized and low-plane convict labor.

I. The method of punishing offenders against society and the manner of housing them underwent radical changes during the early part of the nineteenth century. Some of these reforms had important bearing upon the later problem of competition between convict and free labor. (1). The amount of potential convict labor was increased by substituting labor and imprisonment for other forms of punishment. (2). The persons sentenced to imprisonment with labor were brought together in large state penitentiaries and thereby increased the severity of the competition with citizen labor in the locality of the prison.

(1). During the eighteenth century penal labor was imposed in only a few of our colonies. In so far as it was used, it was applied either by imprisonment with labor, by the use of the indenture whereby convicts were bound out to serve private citizens for a prescribed term, or by imprisonment by night and employment on public streets and public works by day.<sup>2</sup> Massachusetts, Connecticut and Pennsylvania made extensive use of labor as a penal instrument during the eighteenth century, but the other colonies, it appears, did not impose such penalties, but inflicted corporal punishment as a means of correction or retribution. Also the first state laws enacted immediately after the Revolutionary War left the punishment for crime unmitigated in severity, save, perhaps, in Pennsylvania. But the rigor of the penal codes was toned down in later revisions of the laws of the various states and labor was made an alternative or a substitute for corporal, and lastly, to some extent, for capital punishment. There was thus an increased number of crimes punishable by labor, and means of employment was sought by extension of workhouses among the counties and by the establishment of

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<sup>2</sup>Jour. of Criminal Law and Criminology, July, 1914, pp. 242-244.

state prisons and penitentiaries.<sup>3</sup> For example, in New York in 1788 the death penalty was attached to eleven crimes, and the justices of the sessions were authorized to punish disorderly persons and vagrants by six months' imprisonment and whipping. But in 1789 the act was modified by adding hard labor to the imprisonment of disorderlies and vagrants and leaving the whipping to the discretion of the courts.<sup>4</sup> In 1796 the death penalty was imposed only for crimes of murder, treason and stealing from a church, and "imprisonment only" or imprisonment with "hard labor" was imposed for other offenses for which corporal punishment had formerly been inflicted.<sup>5</sup> In a similar manner, as the prison reform extended among the other states, compulsory labor was invariably provided for in the new statutes. In 1829 ten states had adopted a revision of their penal codes, but the other states "retained their old systems with no reform and no labor that would accustom the prisoners to an honest mode of sustenance."<sup>6</sup>

The substitution of labor with imprisonment for other forms of punishment was one of the great penal reforms of the first half of the last century and was a part not only of the general improvement in the method of dealing with the offenders against society, but also of the general humanitarian development and expansion of the social consciousness of that active and fertile period of our history. But specifically the introduction of labor into prisons was urged because "it is productive, it is healthful, it teaches convicts how to support themselves when they leave prison, it is reformatory, and is consonant with republican principles."<sup>7</sup> In advocating the adoption of labor in penal methods it was argued that the financial and disciplinary advantages go hand in hand.<sup>8</sup> "But there was a melancholy reverse to this picture. There is much reason to believe that as a penitentiary, the system was utterly inefficient for purposes of reform or amendment. Indeed in nothing else than as a place of personal labor and restraint

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<sup>3</sup>Ibid., p. 245.

<sup>4</sup>T. E. V. Smith, *New York City in 1879*, pp. 13-14.

<sup>5</sup>Laws of New York, March 26, 1796.

<sup>6</sup>Boston Pris. Disc. Soc. Rept. 1829, p. 31; de Beaumont and de Tocqueville; *Penitentiary System in U. S.*, p. 12.

<sup>7</sup>Boston Pris. Disc. Soc. Rept. 1829, p. 34.

<sup>8</sup>Ibid., Rept. 1828, p. 16.

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was it a place of terror or punishment."<sup>9</sup> But whatever abuses inflicted in the imposition of labor may have been, it is not probable that they were as vicious as the mental, moral and physical deterioration caused by idle aggregate or solitary cellular imprisonment, and were due to a lack of insight into the penological and moral significance of proper administration of penal labor. This was in the early days of our "penitentiary system" when no technique for the management of these prisons or regulation of punitive labor had been acquired by experience. The abuses were not inherent in the use of labor itself, and its adoption as a penal instrument continued throughout the first half of the century as a part of the prison reform movement. But the increase of the supply of convict labor by substituting it for corporal punishment together with other causes involved prison industry in keen competition with the trades of citizen mechanics.

(2). A second cause for the development of this competition was the concentration of convicts sentenced to penal labor in the newly established state prisons and penitentiaries. Though this bringing together of felons into large convict-holds did not itself increase the potential supply of prison labor, it did increase the effectiveness of competition of this labor in particular localities. This system of housing also made possible the introduction of the factory processes and thereby made prison manufactures effective in competition with free industry.<sup>10</sup> The erection of state prisons and the concentration of convicts occurred in all the states whether they had imposed penal labor prior to the prison reform or not. Before this time convicts were confined (and employed so far as labor was imposed) in county workhouses and in "gaols" and each community provided the means of imprisonment or of employment. But near the beginning of the nineteenth century the states began to provide prison houses and employment for certain classes of felons; and gradually this became the familiar and conspicuous means of detention and correction.<sup>11</sup>

This concentration of convicts in state penitentiaries was fostered by perhaps two factors—one penal and civic, and the other economic. Criminals of higher degrees were sent to the state prisons for safer detention and more rigorous discipline than could be main-

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<sup>9</sup>Ibid., Rept. 1826, p. 43 (extract from Gov. Lincoln's message, Jan., 1826). The deteriorating effect of penal labor viciously imposed is described at length in "Inside Out; Or, Interior Views of New York State Prison," pp. 18-22.

<sup>10</sup>Jour. Criminal Law and Criminology, July, 1914, p. 242, ff.

<sup>11</sup>Ibid., p. 245, ff.

tained in the county workhouses.<sup>12</sup> Also it was deemed more equitable that the state should provide the means of imprisonment and employment for convicts who were wards of the whole commonwealth rather than of the counties where the crime may have been committed. The increased number of persons sentenced to imprisonment with labor under the new statutes substituting labor for other forms of punishment further made it necessary to enlarge the means of detention and employment. This the state could do most economically by erecting large prisons and workshops. This concentration of prisoners made possible the aggregate or factory methods of employment and thereby increased the industrial efficiency of prison manufactures, prepared the way for the contract system and accentuated competition with free citizen labor.<sup>13</sup>

-II. The effectiveness of this competition and the manner of employing prison labor are greatly influenced by the industrial development. This influence is operative in several ways. (1). The plan of supplying raw material, supervising the work and disposing of the wares of prison manufacture tend to conform to the method of carrying on free industry in any given period of the industrial revolution. (2). The significance of convict labor as a source of low-plane competition depends on the growth of the factory system, the expansion of the competitive market and the separation of classes and functions in the processes of production.

(1). The method of imposing compulsory labor is determined by a mixture of forces and motives—economic, penological and humanitarian, but the general form of the employment of this labor has in our country been determined chiefly by, or tended to conform to, the manner of performing processes in the concurrent free industry. The employment of penal labor during the past century has characteristic features determined by the growth of the factory system in free industry. But these methods are a modification of those prevailing in the previous stage of our industrial revolution, and hence we will consider very briefly (a) the methods of imposing penal labor in the so-called colonial stage of our industrial history, limiting the discussion to the eighteenth century; (b) the period of transition of penal methods in the first quarter of the last century, during which time the state prisons were being established and the aggregate method of employing convicts was being introduced in prison

<sup>12</sup>Laws of N. J., Feb. 15, 1798; of Mass., Mar. 15, 1805; of N. Y., Mar. 26, 1796.

<sup>13</sup>Jour. of Criminal Law and Criminology, July, 1914, pp. 242, 247.

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manufactures, and (c) the factory method of employing convicts under private competitive methods which is lately being superseded by state control and state use of prison labor.

(a) During the eighteenth century, as has already been intimated, convicts were employed, in so far as penal labor was imposed, either under the indenture or in workhouses and "gaols." Under the indenture employment was of course, supplied in a direct personal manner. This was also the case with misdemeanants sentenced to the workhouses if the persons so punished had relatives or masters in the community. If the prisoners were not the wards of residents of the county, the keeper of the workhouse or "gaol" provided employment. This individual method of employment was in keeping with the industrial condition of the period, and was feasible because the means of production were, as is the case in the domestic stage of production, under the control of the separate family household. The domestic stage of our industrial development is characterized by small-scale production; the market was personal and local, the business was customs-order, and competition existed between the quality of goods and not between their prices as is the case under the factory system.<sup>14</sup> Production was performed either by itinerant tradesmen who carried on their work in the homes of their customers or by merchant-masters who employed a few journeymen and directed the business. In the former case the material was furnished by the customer, in the latter, by the merchant-master. The method of employing convicts and of disposing of their wares was patterned after the manner of performing free industry. The indentured convict, if he were skilled in any craft was employed in the home-shop under the direct supervision of the merchant-master lessee. If he were not skilled he was under equally close personal supervision. The use of the indenture was possible because of the scarcity of labor and the consequent lack of popular sentiment against the presence of convicted persons in the occupations of free citizens. The method of supplying the means of employing persons committed to the houses of correction or workhouses was also in keeping with the prevailing industrial condition. In the handicraft stage of production competition existed not between prices, but between the qualities of goods. Hence, to guarantee a good return from the labor of the prisoners employed at a craft it was only necessary, as in the case of free craftsmen, to guard against poor workmanship and demand prices in keeping with the

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<sup>14</sup>Doc. Hist. of Amer. Ind. Soc., Introduction, Vol. 3.



qualities of the goods. Barring a concentration of prisoners in a community with its personal and local market and consequent oversupply of wares, such a profit was possible provided the keeper was able to bargain successfully with the customers. It was expected that there would be returns from the labor of the prisoners in excess of the cost of their maintenance, and, no doubt, such was the case prior to the erection of the state prisons; and it was expected that even in these there would be a profit accruing from the labor of the inmates. But a change from this simple colonial method of providing employment and disposing of the wares of prison labor was brought about by two factors; namely, first the breaking up of the domestic and journeyman stage of industrial processes which made it impracticable for the family to provide employment, thus making it necessary for the state to perform that function, and which required that prison-made wares be entered upon the competitive market; and second, the increase of prisoners sentenced to hard labor and their concentration in the state prisons and penitentiaries. In the colonial period, to repeat, no detrimental competition existed between free labor and convict labor because the prison-made wares were used by the wards of the prisoner, because of the scarcity of labor in the new country, and because competition in wares and labor was between qualities and not between prices.

(b). The transition between this colonial status of controlling and employing convict labor and the subsequent factory method was brought about by the industrial and penologic development of the first quarter of the last century. During this transitional period the state prisons were developed, penal labor adopted as a means of correction and punishment, and the aggregate method of employing prisoners was instituted. The responsibility for the employment of convicts was wholly assumed by the state, and the wardens of the state and county prisons became entrepreneurs on behalf of the public in directing the prison industry. The warden or agent secured the raw material, tools and machinery, directed the process of production and disposed of the commodities on the competitive price market.<sup>15</sup>

In economic history the first quarter of the century is known as the genesis of our factory system and of our labor problems. "The factory system secured its first real foothold . . . between 1806 and 1815, when the War of 1812, by suppressing trade with Europe.

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<sup>15</sup>Jour. of Criminal Law and Criminology, July, 1914, p. 245, ff.

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forced the American people to do their own manufacturing, and turned large amounts of capital which had previously been employed in trade and shipping into manufactures. The growth during this period of isolation was extraordinary<sup>16</sup> and continued with increasing momentum through the decades. Professor Ely designates the years from 1789 to 1825 as the "germinal period" in the history of American trade unionism. During these years "a separate class of wage earners was appearing, who were especially appealed to by new arguments concerning wages in the tariff discussions; workingmen's parties were organized; strikes and trade unions multiplied, and the latter were combined into municipal and state federations."<sup>17</sup> These growing factory methods and rising labor movement are reflected also in the manner of supplying and directing the employment of convicts in prison manufactures. In this transitional period the state performs the function of the merchant-manufacturer in supplying the raw material and tools, directing the work and searching for a market for wholesale and retail orders. The state laws directed that the prison officials should "vend and dispose of all articles manufactured in the prison."<sup>18</sup> Goods were sold in retail lots from stores,<sup>19</sup> and in wholesale lots by shipment.<sup>20</sup> Transportation facilities and the site of the prison played an important part in the em-

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<sup>16</sup>R. T. Ely: *Outlines of Economics* (1912), p. 73.

<sup>17</sup>*Ibid.*, pp. 73-74, 84.

<sup>18</sup>Laws of Mass., Mar. 13, 1806; of N. Y., Mar. 26, 1796.

<sup>19</sup>In 1806 the officials of the Massachusetts State Prison relate that "The shoemakers are employed in supplying the prisoners and making boots and shoes for sale. \* \* \* Store No. 8, on Green's wharf in Boston, is occupied as a 'State Prison Warehouse' for the reception of raw materials, etc., and for vending the various articles of manufacture, which are deemed by competent judges to be of the best quality and exhibit favorable specimens of ingenuity."—Account of Mass. State Prison by the Board of Visitors (1806), p. 45.

<sup>20</sup>"For many years after the erection of the New York State Prison the agent purchased all raw material" and sold the wares from a prison store (G. Powers' Account of N. Y. State Prison at Auburn, p. 25). In 1835 the N. Y. Central Trades Union reported that a certain Elisha Bloomes sold his prison-made wares from a store which bore the sign, "Trades' Union Hat Store," expecting that the sign would obtain custom (Hist. of Amer. Ind. Soc., Vol. 5, p. 231). In 1839 the cordwainers of the District of Columbia memorialized Congress, representing that "a certain Andrew Hoover had recently opened an extensive 'boot and shoe store,' \* \* \* that said 'boot and shoe store' is chiefly furnished by the labors of convicts let out by contract, that said Hoover, purporting himself to be a manufacturer, is thus enabled by the cheapness of convict labor to furnish boots and shoes at such low prices as to insure to his establishment a great and increasing custom." (Sen. Doc. No. 174, 25th Cong., 3d Sess., Vol. 3; see also Hist. of Amer. Ind. Soc., Vol. 5, pp. 53-56.)

<sup>21</sup>"Also the delay and the distant market—much being shipped to New Orleans—constituted loss and hazard."—G. Powers' "A Brief Account of New York State Prison," p. 53.

ployment of convicts and in finding a market for their wares.<sup>21</sup> The procuring of machinery and raw material for the prison manufactory received prominent consideration.<sup>22</sup> Foremen or "instructors" were hired to direct and oversee the prison workshop if the warden were not skilled in a given craft or process. These instructors were sometimes merely "favored convicts whose feeble or incompetent instruction was resented by the 'learning' prisoner."<sup>23</sup>

A resemblance between the status of free industry and prison manufacture is thus seen in the manner of furnishing capital, raw material and tools, in supervising the process of production, and in searching for the market. But prison labor is not an integral part of the industrial world, and is removed from the ordinary economic necessity of acting in accordance with the industrial laws. For example, the state can maintain the prisoners in idleness, or can underbid the market and sell wares indefinitely below the cost of production. But the demand that prison labor be as remunerative as possible and that at the same time it be wholesome in its influence upon discipline, reformation and health makes the problem of administering this labor a very difficult one. This was the case also in the early part of the century, and several adverse circumstances in the management of prisoners and of convict labor was involved in these penal and industrial demands. These adverse conditions were: (x) scarcity of work and consequent heavy prison expenses; (y) overburdening the wardens with industrial and administrative or disciplinary duties; and (z) resulting from both the inadequacy of employment and neglect by the warden, an evil and harmful condition of penal methods.

(x). The labor and industry of the large prisons over-supplied the limited demands of the market, and a vexing problem of finding employment for the inmates of these prisons arose. This lack of employment was experienced at the very beginning of the penitentiary system,<sup>24</sup> and resulted in all the states in a large annual deficit until

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<sup>21</sup>Ibid., Auburn Prison "is inconveniently located for transportation, as the Erie Canal passes it at the distance of seven miles." (See also Annual Report of Eastern Penit. Pa. 1839, p. 9.

<sup>22</sup>Laws of N. Y., Mar. 26, 1796; of Mass., Mar. 13, 1806; of N. Y., Feb. 15, 1798.

<sup>23</sup>"Inside Out," p. 135.

<sup>24</sup>About a year after the opening of the Massachusetts State Prison (i. e., in 1806), the Board of Visitors reported that "the expense had hitherto exceeded all anticipation, and the unceasing exertion of the former Board of Visitors had failed to make any essential diminution. \* \* \* There has at times been a deficiency of suitable work. The directors hope to correct this by contracting

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the decade of the twenties, at which time several of the states succeeded in netting a profit from the labor of their convicts.<sup>25</sup> In urging employment for prisoners, "productive" work was generally insisted upon, meaning employment from which pecuniary returns could be realized. Consequently the presence or absence of work hinged in a large measure on the question as to whether or not the wares would find a demand on the market. The problem of conducting profitably the prison industry was further affected by the introduction of machine processes into free industry, which forced down the market price and in consequence made the prison industry liable to greater loss because of its inability to keep pace with the advance of industrial processes.<sup>26</sup> The search for marketable wares and for employment suited to the needs of the prisoners led to the introduction of a great variety of occupations. The greater the number

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with manufacturers and others for the employment of any number of convicts that may be found convenient; and they seriously invite the attention of those who want any quantity of coarse work to be done to reflect on the advantage to themselves and society of engaging it at this institution. [Because of the low expense] of the diet and regimen of a prison, the labor of the convicts can be afforded at comparatively small expense. Many contracts for heavy work and some that required much ingenuity have been performed here to the material advantage of individuals and the state (Appendix, Report of the Board of Visitors of Mass. State Prison, pp. 18-19). The difficulty of securing employment is further shown by an extract from the report of the Prison Commissioners in 1814, which says that "It had been the fond thought that the [prison] labor would pay for all expense," but in that they were disappointed. There was serious discussion of employing the treadmill, but finding that its efficiency in power was very low, the idea was discarded (Haynes' Hist. of Mass. State Prison, pp. 4, 13). The treadmill was being used in New York at that time and the power was applied to the grinding of corn—about one bushel per man per day. In 1824 (cf., Rept. Lab. Comm. 1886, pp. 504-5) the treadmill was used in the Connecticut State Prison for the purpose of grinding corn for prison use, and occasionally for the neighboring inhabitants. These are the only instances discovered of the use of the treadmill in the United States. In New York, likewise, the employment of prisoners was very irregular and unproductive,—sometimes in a pin factory, on public highway, picking oakum, and sometimes unemployed. The site of Sing-Sing prison was chosen in order that the convicts might be employed in the inexhaustible marble quarry on the banks of the North River, thirty miles above New York City (Boston Pris. Disc. Soc. 1827, p. 112).

<sup>25</sup>The New Hampshire state prison became self-supporting in 1818 (cf., David Dyer Hist. of Albany Penitentiary, pp. 450-451). Mr. Dyer says: "It [was] believed that this [was] the first instance recorded in penal history of convicts supporting themselves." Massachusetts in 1825 netted a profit of ten thousand dollars from the industries in her state prison, under the contract system (Boston Pris. Disc. Soc. 1826, p. 43; 1828, pp. 15-17). Likewise Connecticut, Maryland, New York, and Kentucky netted a profit soon after the introduction of the contract system during the latter part of the decade of the twenties. The state prison of Kentucky and its inmates were leased to an entrepreneur and the profits shared between the state and the lessee, who had the supervision not only of the labor of the prisoners, but of their discipline and maintenance as well.

<sup>26</sup>Journal of Criminal Law and Criminology, July, 1914, p. 249.

of convicts grouped together in a given locality the greater was the need of diversifying occupations. A second reason for the diversification of industries was the desire to accommodate the crafts to the skill of the prisoners, but it was most generally true that the skill of the convicts was adapted to the occupations that could be most readily applied to the conditions of prison manufactures and that promised the greatest remuneration.<sup>27</sup> This scarcity of work with the consequent economic loss and undesirable disciplinary conditions prompted the adoption of various means of securing employment and led to an active competition with free labor and citizen industry and thereby called out severe opposition from mechanics and manufacturers.

(y). This burden of finding employment together with the ordinary penal affairs laid upon the office of the warden very difficult and diversified tasks. The unprofitableness of the public-account system which prevailed during the first quarter of the last century was thought to be due to the fact that this system imposed more duties on the warden than he was able to bear.<sup>28</sup> The specialization of industrial processes, both as a producer or manufacturer, and as a merchant seeking a market, augmented the difficulty of managing prison industry, especially in the large institutions, and was a large factor in leading to the adoption of the contract and lease systems whereby the entrepreneur functions were turned over to contractors versed in the various processes.<sup>29</sup>

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<sup>27</sup>The scattering of industries was condemned by the Boston Prison Discipline Society in its first annual report (1826), because "where there is great variety of employment the expense to the state is much greater than where there is some one simple and useful trade which occupies the time of a majority of the men." Unity of employment was recommended, because greater economy could thereby be effected. But this criticism did not take into account the condition of the market which had prompted such scattering of industries. The trades of coopering, weaving, shoe-making, tailoring, hat-making, and stone-cutting were recommended, because the implements demanded are few and simple, the arts are easily learned, and the skill is in great demand after the prisoners are dismissed. The occupation most to be preferred, "where the material is easily obtained and the market is good, is stone-cutting." The material is cheap and not easily injured, the art is soon learned, is laborious and healthful, requires little superintendence, the tools are few and simple, demand for work is great, and "the business, on the whole, more profitable to the institution and the knowledge of the art very useful to the convict after leaving prison." Likewise, there are but few objections to weaving. "The article is such as cannot be manufactured in the steam loom or by water power, and it therefore pays well for manual labor. \* \* \* The business of shoemakers, hatters, tailors, coopers, etc., though they are not particularly objectionable, have not been found very profitable." (Boston Pris. Disc. Soc. Rept. 1826, p. 15.)

<sup>28</sup>Boston Pris. Disc. Soc. 1833, p. 76; N. Y. Bu. of Lab. Stat., Part I, 1911, p. 180.

<sup>29</sup>Haynes' Hist. of Mass. State Prison, p. 242; N. P. A. 1886, p. 222. The financial prosperity and the morals of the prison fluctuated with the ability of the keeper ("Inside Out," p. 22).

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(z). The early state-account system was opposed because the unemployment which was ascribed to it not only involved the prisons in annual deficits, but also entailed undesirable penal conditions. The best reformatory results were held to go hand in hand with the strictest enforcement of discipline under steady and vocationally useful employment; and the method of supervision and control was not held to be of much significance so long as constant labor with its salutary influence was obtainable.<sup>80</sup> Hence to escape the penal and economic evils of unemployment the private methods of control were gradually introduced during and following the third decade of the century.

(c). These private methods of control remained the principal means of directing the labor of convicts almost to the present time. It is only within the last few decades that the public has again assumed the more prominent role in the control of prison labor under the state- or public-use system. Under the systems of private control the extent of the supervision by the contractor over the convicts varied from more or less minute restraint and direction in performing the task in the workshop to complete power over the care, housing, discipline and employment of the prisoners. In the contract system the care and discipline of the prisoners are reserved to the warden as his special duty; while in the lease system all these functions are delegated to the lessee. In the piece-price system the power of the contractor extends only to the purchase of the raw material and to selling the finished goods, while the discipline of the prisoners and the supervision of their labor is in the hands of responsible officers and foremen. During the period prior to the Civil War, the contract system predominated, though the lease system was also used somewhat in the Northern states. Following the Civil War the lease system became the most general means of employment in the reconstructed states; but since the decade of the eighties the state-account system has been reintroduced here and there, and the piece-price system has been adopted as a means of reconciling the demands of labor unions and penologists. But the adoption of the state-account and piece-price systems, it was discovered, did not remove the menace of competition nor afford the corrective effects desired. Hence the recent method of state-control and state-use was developed under which the state and its political divisions use the convict labor in construction

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<sup>80</sup>Boston Prison Discipline Society Report 1827, p. 73.

and other public works and apply the products of prison industry to the maintenance of its own institutions without entering the goods upon the price market.

The adoption of the contract and lease systems was prompted by a desire to secure regular and wholesome employment for penological reasons and for greater financial returns. But the separation of the entrepreneur function of the warden from his disciplinary duties was due to industrial, rather than to penological developments. In free industry the factory supplanted the home-shop as the typical unit of employment. "Instead of working by themselves or with a few assistants, men now . . . submit to a new discipline in large groups organized for purposes of production. Along with the new method of production there has been a change from restricted local markets to national, and even world markets."<sup>31</sup> During the first half of the century the functions of manufacturer and merchant became highly complicated and required a high degree of specialization. The manufacturer must command large capital, and supervise intricate processes of labor performed by the team work of a mass of workers. The merchant "reaches out for wholesale orders. He adds heavy expenses for solicitation and transportation. He adds a storeroom and a larger stock of goods. He holds the stock a longer time, and he gives long and perilous credits at the same time. He meets competitors from other centers of manufacture, and cannot pass along his increased expenses. Consequently the wage-bargain assumes importance, and the employer function comes into the front. Wages are reduced by the merchant as employer on work destined for the wholesale market. The conflict of capital and labor begins."<sup>32</sup> Following the middle of the century our industrial processes receive a new impetus; machine processes are made more extensive and more intricate, the market expands still further and a keener competition arises. "The merchant-capitalist intensifies and even creates the antagonism of 'capital and labor.' He does this by forcing the separation of functions and classes a step further than it had been forced in the wholesale-order stage. First he takes away from the retail merchant his wholesale-order business. He buys and sells large quantities; he assembles the cheap products of prison labor, distant localities and sweatshops; he informs himself of markets and beats down the charges for transportation—thus he takes to himself the wholesale business and leaves to the merchant the retail trade. Second, he drives off the employer

<sup>31</sup>R. T. Ely: *Outlines of Economics* (1912), pp. 47-48.

<sup>32</sup>*Hist. of Amer. Ind. Soc.*, Vol. 3, p. 39.

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function from the retail merchant. The journeyman he hands over to specialists in wage-bargaining."<sup>33</sup> In this growing factory system with its consequent specialization and competition the wardens were unable to hold their own in directing the prison industry, and therefore the states turned over to private manufacturers the labor of the prisoners in lieu of a specified daily or annual fee. This method of controlling the labor of convicts continued in conformity to the industrial exigency until the demands of organized labor and penologists in recent years forced the adoption by state legislatures of a system of applying this labor which removes it from competition with free industry and makes the reformation of the criminal and freedom from menacing competition rather than pecuniary returns, the criterion of the success of the system of employment. Thus, until conscious and purposed control assumed the leading role in dictating policies, the manner of imposing and supervising compulsory penal labor conforms to the manner in which free industry is carried on in the given stage of the industrial development. In the eighteenth century prison labor resembles the handicraft stage of production. The first quarter of the nineteenth century shows the beginnings of the factory method, and of competition between prison and free labor. The last three-quarters of a century shows the relentless drive and specialization of the factory system in the exploitation of convicts under the contract and lease systems in the hands of irresponsible entrepreneurs. These different methods of controlling convict labor fall into the given order of sequence because of the peculiar industrial development of the respective periods.

(2). But the status of the industrial development is significant in determining not only the form of imposing penal labor, but also the nature and the extent of the competition between free citizen labor and convict labor. Prior to the nineteenth century the handicraft and domestic system of production prevailed, and the journeymen and merchant-masters were able to secure a fair return from their labor by setting the price of their wares according to the quality of the material and workmanship, and holding out for this price; that is, by shifting the cost of material and labor to the customer. Profit was not dependent on reducing wages as much as on increasing prices.<sup>34</sup> But the nature of competition changed with the introduction of the factory system. The burden of competition shifted from

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<sup>33</sup>Ibid., pp. 42-44.

<sup>34</sup>Ibid., p. 39.



the quality of goods to their prices, and the burden of the competition was forced back on the laborer. The merchant-employer seeks the distant market and as he cannot pass on to the consumers the additional cost of reaching this distant market he must reduce wages to keep down the cost. Next the merchant-capitalist intensifies this antagonism by forcing the separation of functions and classes a step further. "He strips the former merchant-master both of his market and his journeymen. The wholesale market he takes to himself; the journeymen he hands over to a specialist in wage-bargaining. This specialist is no longer known as 'master'—he takes the name of 'boss' or employer. His profits are not those of the capitalist, neither do they proceed from his ability as a merchant, since the contract prices he gets are dictated by the merchant-capitalist. His profits come solely out of wages and work. He organizes his workmen in teams with the work subdivided in order to lessen the dependence on skill and increase speed of output. He plays the less skilled against the more skilled, the speedy against the slow, and reduces wages while enhancing exertion. His profits are 'sweated' out of labor, his shop is the 'sweatshop,' he the 'sweater.' The journeyman function is now segregated on two levels of competition, the higher level of custom work and the lower level menaced by prison and sweatshop work. The employer-function, the last to split off, makes its first appearance as a separate factor on the lowest level of market competition. Evidently the wide extension of the market in the hands of the merchant-capitalist is a cataclysm in the position of the journeyman. By desperate effort of organization he struggles to raise himself back to his original level. His merchant-employers sympathize with him and endeavor to pass over to their customers his just demand for a higher wage. But they soon are crushed between the level of prices and level of wages. From the position of a merchants' association striving to hold up prices they shift to that of an employers' association endeavoring to keep down wages."<sup>35</sup>

By this expansion of the market, division of functions, and development of team work and machine processes a separation of classes and of interest arises. Competition occurs between mechanics or between laborers of the same class. But especially is the low-level competition a menace to higher-level workmen as a possible and real source

<sup>35</sup>Ibid., p. 42 ff.

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of under-bidding wages and prices. This fact is described by Professor Commons in the following manner:

“Defining the ‘marginal producer’ as the one with the lowest standard of living and prices and quality of work, he is the producer whose competition tends to drag down the level of others toward his own. It is not necessary that he be able actually to supply the whole market or even the greater part of it. His effect on others depends on the extent to which he can be used as a club to intimidate others against standing out for their side of the bargain. He is a menace rather than an actual competitor. Now, the extension of the market for the sale of goods is accompanied by an extension of the field for the production of goods. This extension brings into the competitive area new competitors who are essentially a series of low marginal producers. The capitalist who can reach out for these low-level producers can use them at will to break down the spirit of resistance of high-level producers. In the custom order stage there was but one competitive menace, the shoemaker who made ‘bad wares.’<sup>86</sup> In the retail shop stage there is added the ‘advertiser,’ the ‘public market’ and the auction system. In the wholesale-order stage there is added the foreign producer, and in the wholesale-speculative stage the labor of convicts and sweatshops. Thus the extension of the field of production increases the variety and discovers lower levels of marginal producers, and the merchant-capitalist emerges as the generalissimo menacing in turn every part of the field from his strategic center.”<sup>87</sup>

The role of convict labor as one of the sources of low-plane competition is to afford a menace to the higher-level citizen laborer. During the colonial period there is no evidence of this detrimental competition, but in the early part of the nineteenth century such a menace shows itself in the endeavor of the wardens to find employment for the inmates of the state prisons. Both the industrial factors creating competition as described in the foregoing paragraphs and the abnormally large force of convict labor concentrated in the penitentiaries contributed to this competition. As early as 1806 the scarcity of work among the prisoners led the overseers of the Massachusetts State prison to offer the labor of the convicts at greatly reduced wages because the cost of maintenance was very low. This fact of the low cost of subsistence of convicts under any system of employment together

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<sup>86</sup>Dr. Commons, in describing the history of the journeymen cordwainers, but he says that this development epitomizes the development in the entire industrial revolution.

<sup>87</sup>Ibid., p. 48.

with the fact that this labor is subsidized and may hence be let out for more or less than the cost of such subsistence is the course of the evil arising from the entrance of convict labor on the competitive market. "In dull times the prison produces as before; its goods accumulate and must be gotten rid of. In good times when labor is scarce and the demand for goods is brisk, the independent manufacturer must pay high wages and cannot afford to compete with the prison industry which pays no wages, tax or rent. Though the amount of prison-made goods is relatively small, it affects the price of other goods regardless of the quantity. One thousand pairs of shoes offered in the market will affect the price of one million pairs of other shoes for a year or more. If the amount of prison-made goods were not limited and could be produced in any desired quantity, they would monopolize the output and destroy the business of all competitors."<sup>38</sup> The underbidding of the market was resorted to in the beginning of our penitentiary system and has continued to the present time under all systems of employment excepting the recent public-use system.

The evils of competition have been usually ascribed by citizen mechanics to the system in use at any given time and place. Under the early state account system it was thought the underbidding of the market was due to the fact that the state could lead the market, and it was supposed that free competition in bidding for the labor of convicts would remove the menace. When the contract and lease systems were introduced the underbidding continued. The menace was then ascribed to the greed of the contractor who by reason of the low rates paid for prison labor and the exploitation of the convicts was enabled to undersell the general market.<sup>39</sup> But the competitive menace continued under the state-account and piece-price systems which were reintroduced in the latter part of the last century. When in the decades of the seventies and eighties the pressure by labor organizations against the then existing contract system was most severe, prison officials declared that convict labor, because of its relatively small amount, produced no appreciable affect on free labor. The public officials were of the opinion that the care with which contracts are made and production and selling supervised is of more importance in competition than the system employed.<sup>40</sup> Both labor leaders and pub-

<sup>38</sup>N. P. A., 1707, p. 135.

<sup>39</sup>Hist. Eastern Penit. Pa., p. 53; Ann. Rept. Boston Pris. Disc. Soc. 1833, p. 75; Hist. Amer. Ind. Soc., Vol. 5, p. 53, ff.

<sup>40</sup>N. P. A. Rept. 1887, p. 320; Rept. Comm. of Lab. 1886 (the entire report is devoted to convict labor).

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lic officials failed to see the real cause of the evil arising from the sale of low-cost prison-made wares on the competitive market—the menace of low-plane labor under the factory system of divided functions and interests. The way of escape from this menacing competition was finally sought in the adoption of the public-use system. This system is now being extensively adopted as the outcome of a century of incessant experimenting and legislation.

III. The program of organized effort for the control of convict labor and the abolition of the unfair competition was prompted by two motives—one ethical and the other economic. In a general way, of course, the entire question of competition and the whole range of economic relationship is an ethical problem. But in a more specific way, certain moral abuses arising from the employment of convicts have been protested against by citizen craftsmen and laborers. These moral and economic motives and interest have given direction to the demands and policies for the restriction of the employment of prison labor and have supplied the incentive for a century of continual agitation. The political activities of labor unionism can then be best observed by an analysis of (1) these motives of action, (2) the demands of citizen mechanics in their endeavor to set bounds to the nature and extent of the menace and displacement arising from the employment of convict labor on marketable wares, and (3) the attainment by legislation in this endeavor to secure freedom from this competition.

(1). The motives of opposition against convict labor have arisen from two sources; namely (a) the moral abuses, and (b) the economic loss incurred by this menacing competition and by the displacement of free labor by prison labor.

(a). The matter of unequal competition has always been looked upon by citizen mechanics as unfair and hence as morally wrong. But other more specific moral abuses were most emphatically condemned. Thus, for example, it was protested that "the government grossly abuses its trust and inflicts incalculable injury on society when it permits prison labor to control the results of regular and honest competition and compels the citizen who has always kept his fealty to the state to put his industry below the ordinary standard of reward."<sup>1</sup> In addition to this injury to the means of livelihood a second injustice and moral wrong was early complained of. The permission granted prison-taught and trained mechanics of coming into the ranks of free

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<sup>1</sup>Doc. Hist. Amer. Ind. Soc., Vol. 6, p. 51.

journeymen was declared to be even more nefarious than the economic evils entailed upon the mechanics by the unfair competition. "The education of felons in the State Prisons in the mechanical arts results in scattering abroad among honest mechanics and mechanics' families and apprentices, a class of degraded men as their associates—thereby poisoning the atmosphere of their workshop, converting them into schools of vice and crime under the tuition of graduates from the State Prison, and bringing disgrace on an honorable class of citizens."<sup>43</sup> It was also thought that the occupations of mechanics were degraded in public estimation by the use of their trades in prisons.<sup>44</sup> During the entire period of our penitentiary system it has been held by many citizens that the "hard-working and honest mechanic is insulted by having felons put on an equal footing with him. The rank of his trade are not filled with reputable and worthy men like himself, but with the outpourings of the penitentiaries."<sup>44</sup>

Although these moral objections are still raised against these abuses in the employment of convicts, there is more willingness on the part of the laborers to give the ex-convict a chance to make good in his vocation, and more concrete content has been embodied in the ethical agitation. Thus in the report of the proceedings of the American Federation of Labor for 1901, it is declared that "The present system of employing convicts . . . is a wrong to the convicts themselves, making the name of the reform schools and penal institutions a misnomer, inasmuch as the inmates of such institutions, instead of being taught some trade are under the present contract system of employment further debased."<sup>45</sup> While citizen mechanics today still resent working with an ex-convict, officially and, no doubt, among increasing numbers of individuals, the right to an occupation is granted the former offender against society, and protection is afforded him against the cupidity of contractors of prison labor. The solidarity of labor is acknowledged in opposition to the interests of the capitalist and employer.

(b). In addition to these moral objections the economic evils of competition prompted the opposition of labor unions against specific conditions of the employment of convicts. "This competition showed itself as a drag when the movement for higher wages began," and

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<sup>43</sup>Ibid., Vol. 8, p. 322.

<sup>44</sup>Bu. of N. Y. Lab. Stat., Part I, 1911, p. 177, ff.

<sup>45</sup>N. P. A. Rept. 1886, p. 248.

<sup>46</sup>Rept. Proceedings A. F. D. 1901, p. 194.

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organized labor at once formulated the issue which it has insistently pressed for three-quarters of a century."<sup>46</sup> Even as early as the second decade of the last century the economic loss to free mechanics called out public disfavor against the employment of convicts on mechanical arts. In 1816 public prejudice deterred citizens from entering into contract for prison labor.<sup>47</sup> In 1823 the mechanics protested in the columns of the *New York Mechanics' Gazette*, against the employment of convicts in the mechanical occupations and voiced their apprehension that free laborers in the threatened trades would be displaced by the convict labor. The employment of convicts, it was stated, "created dissatisfaction in the minds of all whose business happened to be introduced into the prisons."<sup>48</sup> In 1825 the New York State Prison, then located in New York City, was removed to "Mount Pleasant" (now Sing Sing), by an act of the legislature, mainly because of the "demand of mechanics that convicts should not be employed upon the manufacture of goods that come in competition" with citizen industry. At the new location of the prison the convicts were employed in an extensive rock quarry.<sup>49</sup> In 1830 the abuses of displacement of citizen labor and the menace of underbidding the market prices were very emphatically denounced in a journal championing the cause of labor.<sup>50</sup> In 1834 the New York mechanics condemned officially the "prison monopoly" and petitioned congress to abolish the contract system.<sup>51</sup> Both in New York and Pennsylvania "the excitement on this subject had reached a dangerous height" among the mechanics, but the report of committees appointed to investigate the effect of prison labor upon citizen industry declares that prison-made goods were not sold for less than market prices, that the relative amount of prison labor was insignificant, that no detrimental competition was created, and that no occasion for such unrest existed.<sup>52</sup>

<sup>46</sup>Doc. Hist. Amer. Ind. Soc., Vol. 5, p. 35.

<sup>47</sup>G. Powers: *A Brief Hist. of N. Y. State Prison*, p. 25.

<sup>48</sup>Doc. Hist. Amer. Ind. Soc., Vol. 5, p. 51.

<sup>49</sup>Inspectors of N. Y. Pris. Rept. 1868, p. 25.

<sup>50</sup>Doc. Hist. Amer. Ind. Soc., Vol. 5, p. 52.

<sup>51</sup>N. Y. Bu. of Lab. Stat., Part I, 1911, p. 177, ff.

<sup>52</sup>Hist. Eastern Penit. Pa., p. 53, ff. The New York Committee reported to the legislature (Bu. of Lab. Stat., Part I, 1911, p. 177, ff.) that the dissatisfaction was due to the contract system and that all occasion for opposition would be removed if the length of the contracts were limited, bidding for prison labor made public and open, and employment applied to articles that are mostly imported. In 1833 a committee reported, condemning not the contract, but the unprofitableness and inhumaneness of the public account system (Boston Pris. Disc. Soc. Rept. 1833, p. 75).

But the report of the journeymen cordwainers represents that the prison-made goods were being sold thirty per cent below the established prices. At that reduced rate it was declared, "no regular manufacturer could pretend to sustain himself and pay half wages to his journeymen." Another source of severe resentment was the fact that goods were made in prison forty per cent "below the most reduced journeyman's wages."<sup>53</sup> The dread and dislike with which free mechanics and manufacturers regarded the low-plane competition is further shown by a "memorial" to congress by the master and journeymen cordwainers of the District of Columbia in 1839. This petition to congress represents that the labor of the convicts was let out to a contractor who represented himself to be a manufacturer with establishments in Philadelphia and New York. By the cheapness of this labor he was able to underbid free labor and thereby to "insure to his establishment a great and increasing custom," which threatened to throw the citizen mechanics out of employment, depriving them of their only means of livelihood.<sup>54</sup>

During the time of the rapid growth of the factory system following the Civil War, trades unions came together to consider means of protection "against further encroachment of their means of living by the legislatures and prison authorities of the various states."<sup>55</sup> The public protests against the moral and economic wrongs became more numerous as the decades went by; and since the federation of labor unions in 1886 not a convention is held during which it is not declared that this competition "is unfair and unjust inasmuch as the product of convict contract labor is sold below the regular market price of the product of free labor,"<sup>56</sup> and that the policy of conducting prison labor for the profit of contractors or of the state is unjust to the convict and the honest citizen.<sup>57</sup> The motives of opposi-

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<sup>53</sup>Hist. Amer. Ind. Soc., Vol. 5, p. 51, ff.

<sup>54</sup>Sen. Doc. No. 174, 25th Cong., 3d Sess., Vol. 111. There was sufficient reason for alarm, for 55 of the 74 male convicts of the penitentiary were employed at making shoes, as is shown by the warden's report of 1839. He also states that the boot and shoe department "will not suffer by comparison with the best shops in the country." Other departments were less successful because of the "difficulty of disposing of the articles manufactured."

<sup>55</sup>Proceedings of Convention of Workingmen, 1879-1881.

<sup>56</sup>A. F. of L. Report 1910, p. 230.

<sup>57</sup>Ibid., 1906, p. 25; 1910, Pres. Rept. The attitude of the A. F. of L. can be readily traced in the Reports of Proceedings since 1886. The volumes are well indexed and the discussions and resolutions are easily located.

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tion against the uncontrolled competition of prison labor have, throughout the history of the penitentiary system, been both moral and economic and have grown in intensity as the industrial revolution progressed.

(2). The motives which prompted the program of agitation and opposition against convict labor also determined the nature of the demands proposed in this legislative program. Various restrictions and means of control were early suggested, but they lacked concreteness and effectiveness in attaining the desired end. But as the struggle continued the issue was defined with increasing clearness, and today embodies extensive statutes for setting limits to competition from prison labor. Throughout the entire period the contest centered mainly about the employment of prisoners in mechanical arts and the disposition of the wares of these arts on the competitive market, with the consequent menace to prices and wages in free industry. Several suggestions in the third and fourth decades had considerable merit as means of limiting the severity of competition but they were far in advance of public opinion and were not put into effect for many years; while other proposed devices affected only the apparent cause of competition and did not reach the real source of the evil. For example it was thought that the menace was due to the fact that the state led the market prices, or that the reason for the contractor's underselling the market was due to the absence of free and open competition in bidding for the labor of convicts, or that the evil of the mechanical employment of convict labor lay in the fact of long terms of contract whereby the employer was enabled to make the prison laborers efficient, and that the evil would be removed by limiting the term of contract. To be sure such misapprehensions have been quite prevalent among both mechanics and prison officers till recent years, but the trial of all the systems of employment under private or public control save the state-use system finally demonstrated that the menace in competition was due to the selling on the open market of subsidized and low-plane prison labor.

Other proposals in the first half of the century for the limitation of competition provided that convicts be employed only on occupations not practiced among citizen mechanics or in the manufacture of articles supplied by importation. It was further suggested that prisoners be employed on mechanical arts for government use only, and in construction work on buildings, roads and canals. But all these, it was protested by public officials, would not remedy the cause of competition, and would merely displace other citizen mechanics in



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work that belonged to them by the right of citizenship; and it was further objected that the government had neither the organization nor the capital to enter on such projects of public improvement.<sup>58</sup> Unskilled workmen also objected against being robbed of their work by convict labor. They contended that it was unjust to withhold the mechanical trades from the prisoners and employ them in the non-mechanical occupations.<sup>59</sup> The same contentions are made even today, but the most satisfactory adjustment so far found, labor unions say, is in the practice followed in the state-use system, which is the best solution outside of the employment of prisoners on public farms and at reclamation work.<sup>60</sup> There has been a constant effort to restrict the labor of convicts to the less crowded occupations, and it is safe to assume that no adjustment will be reached that meets with complete satisfaction of all citizen mechanics and laborers because locally any employment will displace free labor to a greater or less extent. But the official policy of federated labor concerning the control of convict labor is safe and sane, and will never be likely to urge such restrictions in its imposition as to detract from the use of such labor for the best social ends.

As competition became more severe along with the industrial revolution and as the social consciousness expanded, more concrete measures were suggested and more emphatic demands made for the restriction of the menace of convict labor. These demands related both to the economic and moral evils. The economic demands included such measures as the restriction of the occupations open to convict labor, limiting the hours of employment of prisoners whether employed by the state or by contractors, preventing interstate shipment of prison-made goods, branding all such goods, employing prisoners in the manufacture of wares supplied by importation, forbidding the importation of raw or finished goods upon which convict labor has been bestowed, restricting the use of powerful machinery in prison industry, demanding the use of hand processes so far as possible, limiting the number of prisoners employed in the production of marketable wares, abolishing the contract, lease, piece-price and state-account systems and demanding the adoption of public control and public

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<sup>58</sup>Sen. Doc. No. 174, 25th Cong., 3d Sess., Vol. III; Bu. of N. Y. Lab. Stat., Part I, 1911, pp. 177-84.

<sup>59</sup>Hist. of Amer. Ind. Soc., Vol. 8, pp. 223-225.

<sup>60</sup>A. F. of L. 1897, pp. 22, 76.

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use of convict labor.<sup>61</sup> The moral and humanitarian measures were partly linked with the foregoing proposals, and included the extending of protection to the prisoner against exploitation by contractors, i. e., abolishing private control and substituting public control, granting the convict wholesome and instructive employment, granting him or his dependent family a share in the fruit of his labor, limiting the hours of his day's work, making the object of his work reformatory rather than profitable, and granting instruction in elementary education to the corrigible and young offenders.<sup>62</sup>

In comparing the later moral and economic demands with the earlier ones a decided growth and improvement is seen. New means are sought for the restriction of competition and a new force—the federation of labor—is created to attain the demands. The moral attitude has changed. The resentment against teaching convicts a trade and scattering them among “honest mechanics” has given way to a condemnation of the penal system that fails to reform and to give needed training and instruction in useful trades and elementary education to the corrigible prisoner. The hatred of the criminal has been tempered somewhat with pity for the offender and with a desire to protect him against an avaricious or thoughtless contractor or lessee; reformation and not profit is demanded of the penal institutions. This development of the economic and moral demands of mechanics has been influenced not only by the growing solidarity of interests of the laborers resulting from the industrial expansion, but also by the enlarged social consciousness and socialized philosophy. The moral and political demands of the earlier stage of the development of competition arising from the employment of convict labor were influenced by the transcendental philosophy and idealistic attitude pervading our political and social life at that time. But this higher idealism has given way to a lower idealism for the amelioration and improvement of social conditions by concrete and, perhaps, commonplace remedies by legislation and social control. This new political philoso-

<sup>61</sup>A. F. of L. 1890, p. 36; 1897, pp. 22-76; 1898, p. 64; 1909, p. 222; 1899, p. 148; 1901, p. 124; Proceeding of Convention of Workingmen (Orange, N. Y.), 1879; Eaves: Cal. Lab. Leg., p. 30, ff.; Rept. Comm. of Lab. 1886, pp. 572, 586.

<sup>62</sup>The editor of the *International Moulders' Journal* thus summarizes the attitude of labor unions: “Briefly reviewed, the trade-union attitude toward prison labor is that its first object should be the prisoner's reformation; that under no circumstances should any element of private profit enter into consideration; that the labor performed by the prisoners should be of a useful nature and that for his labor the convict should be paid, for the benefit of those dependent upon him and for his own assistance upon regaining freedom; and, finally, that the principal object of the state should be to protect itself from the vicious and unfortunate, to give them an adequate opportunity for reformation, but not to derive profit from their labor” (*Annals Amer. Acad. Pol. and Soc. Sci.* March, 1913, p. 137).

phy is seen in all phases of our social life, and in the control of prison labor, has resulted in the last twenty-five years in extensive legislation for the protection of convicts against the cupidity of contractors and of citizen mechanics against the menace of a low-plane competition.<sup>53</sup>

(3). These achievements can be traced step by step throughout the history of our factory system. As early as 1823 mechanics of New York declared that they would lend their "suffrage to such only as would pledge themselves to use their best effort to stop"<sup>54</sup> the evil of displacing free mechanics by convict labor. In 1835 these mechanics urged that prisoners be restricted to their own trade if they have any when they are imprisoned.<sup>55</sup> Such a law was enacted in 1844, but afforded little or no relief, partly because it was not enforced, and partly because, even when enforced, the menace continued.<sup>56</sup> The mechanics "resolved" concerning the moral disgrace and economic injury that they would never cease their "exertion against this prime evil till the last vestiges of the statutes which uphold it are totally eradicated from the records of the state."<sup>57</sup> In 1847 the term of the contract was limited to five years, a consideration that had been urged in 1835.<sup>58</sup> In Connecticut it was the policy in the forties to manu-

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<sup>53</sup>Following the Civil War, when the menace of low competition was most severe and opposition against contract prison labor was at its height, demands of labor unions were opposed as having little merit and being ungrounded in fact. The statistics gathered by the U. S. Commissioner of Labor in 1886 concerning convict labor had the effect, contrary to justice, of discrediting the arguments advanced by labor organizations. For it was found that the product of prison labor was only .054 of one per cent of the total mechanical product of the country. The total prison population of those institutions in which productive labor was carried on was but one in a thousand of the population of the country, and those engaged in convict labor only one in three hundred of those engaged in free mechanical labor. Prominent prison officials and penologists, who had formerly sided with citizen laborers, now emphatically declared that labor unions were prompted by greed and prejudice. The general opinion expressed in the meetings of the National Prison Congress in 1887 was that no appreciable effect was produced by convict labor upon citizen labor (N. P. A. 1887; 1885. p. 205; 1899, p. 216, ff.; Comm. of Lab. 1886, p. 137, ff.; 5th Ann. Conf. of Charities, p. 166). But "union men, being for years brought constantly and intimately in contact with the economic and social consequences of contract prison labor," persevered in the struggle and won their demands (Annals Amer. Acad. of Pol. and Soc. Sci., March, 1913, p. 10). For a statement of the influence of labor unions on the political parties and their platforms, see *Ibid.* and "Text Book of Labor's Political Demands" (1906).

<sup>54</sup>Doc. Hist. of Amer. Ind. Soc., Vol. 5, p. 51.

<sup>55</sup>N. Y. Bu. of Lab. Stat., Part I, 1911, pp. 180-181.

<sup>56</sup>Doc. Hist., Vol. 8, p. 322.

<sup>57</sup>*Ibid.*

<sup>58</sup>Rept. Comm. of Lab. 1886, p. 576; Bu. of Lab. Stat. of N. Y. Rept. 1911, Part I, p. 180.

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facture only those articles "commonly imported into the United States and which would not come into direct competition with the industries of the state."<sup>69</sup> The effort to restrict the trades that might be used in prisons was early successful in various states. As craft organizations developed after the Civil War they opposed the use of their trades in prison industry and organizations were effected to combat the evil resulting from the extensive use of their trade in prison manufacture.<sup>70</sup> In 1878 the hatters of New Jersey succeeded, after a protracted struggle, in getting a bill through the legislature prohibiting the manufacture of hats in the Trenton Prison.<sup>71</sup> In 1883 the New York legislature prohibited the manufacture of fur or wool hats in any prison of the state, either under the contract or state-account systems,<sup>72</sup> and in California the employment of convicts on marketable wares was limited to the manufacture of jute sacks, which industry is not carried on by free labor save among a few Chinamen.<sup>73</sup> Protection against fraud and competition was sought by labeling prison-made wares, and several states in 1883 enacted such laws for goods consigned for state, but not for interstate shipment.<sup>74</sup> Higher contract prices and an eight hour day were advocated as a means of preventing underbidding of the market.<sup>75</sup>

The many minor demands looking toward restriction and control of the competitive menace and the moral abuses affecting both the convict and the citizen laborer were mostly summed up in the opposition against the private methods of control and in the demand for the adoption of public control and use of prison labor. The private method of control prevailed for the greater part of the last century and were not restricted by legislation till the amalgamation and federation of trade unions were affected. The preamble of the Knights of Labor "declared to the world" that one of its aims was "to prohibit the hiring out of convict labor."<sup>76</sup> The American Federation of Labor likewise opposed with all its energy and relentless hatred the contract and lease systems and through its legislative committees directed the state and national campaigns against these systems of

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<sup>69</sup>Amer. Ec. Assn. Pub. Ser. 3, Vol. 8, No. 3, p. 236.

<sup>70</sup>A. F. of L. Rept. 1889, p. 26; 1909, p. 316.

<sup>71</sup>Proceedings of Convention of Workingmen, 1879-1881.

<sup>72</sup>Rept. Comm. of Lab, 1886, p. 578.

<sup>73</sup>Eaves: Cal. Lab. Leg., p. 262, ff.

<sup>74</sup>A. F. of L., 1909, p. 222; Rept. Comm. of Lab. 1886, pp. 572, 586.

<sup>75</sup>A. F. of L., 1885, p. 17; 1897, p. 76

<sup>76</sup>R. T. Ely Labor Movement in America, p. 87.

private control. Where competition with low-level workers was keenest and where sympathy (and the labor vote) was strongest, the restrictions were achieved earliest. In 1879 California forbade the use of the contract system by constitutional and statutory enactments.<sup>77</sup> Pennsylvania forbade its use in 1883, New Jersey and New York in 1884, Ohio, Illinois and Wyoming in 1886, Massachusetts and the Federal Government in 1887. In 1867 the contract and lease systems were the prevailing method of employment throughout the country, the state-account system being in use in only three prisons in the Union, but in 1899 the contract system was forbidden by eighteen states and territories, including the District of Columbia. In 1905 twenty-eight states restricted the use of the contract after the expiration of the then existing agreements, and in 1911 the last vestige of the employment of convicts under the contract system had disappeared from twenty-six states, and was in partial use along with systems of public control in sixteen states, but remained the exclusive means of employment in only three states.<sup>78</sup>

Although the contract system was abolished and the state-account and piece-price systems were employed, competition continued unchecked, and a movement began for the adoption of a method of employing prisoners whereby the products of their labor should be withheld from the competitive market and used by the state and its political divisions on public works and in the manufacture of articles for public institutions. This is known as the state- or public-use system. This manner of employment has been agitated ever since 1835, and is within the last few years coming to be the most conspicuous method of employing those sentenced to compulsory penal labor.<sup>79</sup> But even this method is not altogether satisfactory to citizen laborers and mechanics "because it reserves for convicts much of the work of the state and its political divisions that rightfully belongs to the free laborer."<sup>80</sup> But it is held by labor unionism to be the best method of employment yet devised and is, in the main, meeting with satisfaction because of its moral provisions and its relative freedom from a harmful competitive menace. Citizen mechanics urge that convicts be engaged on public land, in gardening and at other public outdoor work,<sup>81</sup> and

<sup>77</sup>Eaves: Cal. Tabl. Leg., p. 362.

<sup>78</sup>Jour. of Criminal Law and Criminology, July, 1914, pp. 255-260.

<sup>79</sup>Ibid, p. 261, ff., and N. Y. Bu. of Lab. Stat., Part I, 1911, p. 180.

<sup>80</sup>A. F. of L., 1897, p. 76, ff.

<sup>81</sup>Ibid.

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such forms of labor are being generally employed by the various states of the Union.<sup>22</sup>

The adoption of these recent methods of employing convicts is the outcome of a century of endeavor of citizen mechanics to secure freedom from the menacing competition of prison labor. This competition was brought on (1) by the development of our penitentiary system whereby compulsory labor was made a means of punishment and reformation, thus creating a large potential supply of prison labor and whereby convicts sentenced to such labor were concentrated in relatively few occupations within narrow markets, and (2) by the development of the factory method of production which resulted in the division of classes and functions, shifted the burden of competition to the laborer and made low-plane producers a menace to the standard of living of the higher-plane workman. Convict labor is such a menace in competition and is objectionable on moral and economic grounds. To remedy these evils labor unions have striven for various restrictive and regulative measures and have turned to political activities to obtain their demands. By this political program, legislation has been effected abolishing the systems of private control and adopting public control and, in an increasing measure, public use, of convict labor. By this triumph of social control, the prisoner is protected against exploitation and the citizen mechanic against unequal and unfair competition.

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<sup>22</sup>Jour. of Criminal Law and Criminology, July, 1914, p. 266.

## EMPLOYMENT AND COMPENSATION OF PRISONERS.

(Report of Committee A of the Institute.)

EDWIN M. ABBOTT, Chairman.<sup>1</sup>

The consideration of the questions of employment and of compensation of prisoners is of such importance that it is impossible for your committee at this time to make a report sufficiently comprehensive to justify conclusive action on the part of the Institute.

In undertaking the solution of the problems presented to your committee, we have considered both subjects of employment and compensation severally, and therefore present the results of our investigation along these lines.

The question of employment of prisoners is not a new one, and has been considered in nearly every state in the Union. There are many viewpoints on this subject, varying from the states in which prisoners are not employed at all, or in which number of prisoners employed is limited, to the other extreme, in which every prisoner is assigned some work to perform, even the "short-terminer."

The most popular form of employment among many of the states is road work, and in fact that is the only form of employment recognized in many of the states outside of menial service in the institution itself. There are almost as many methods employed in utilizing prisoners as there are states. Conditions, to a great extent, regulate the character of employment.

The penal farm is the system which is now increasing in popularity. This system does not imply simply a farm, for many of the penal farms are supplied with buildings in which manufacturing and other pursuits are followed. The penal farm system did not originate in this country. It has proved most satisfactory wherever tried abroad. Usually it has been used as the workshop for minor convicts. At Merksplas, Belgium, is probably the largest institution in Europe. The majority of these inmates are habitual drunkards, and they are put to work on the farm, in reclaiming land and in manufacturing articles which are exported to the colonies. This farm has produced a return to the government over all expenses.

In Switzerland the government has established labor colonies in every one of its 22 cantons. All who are guilty of minor offenses are committed there, as well as the unemployed who may apply for work. Witzwyl is the largest of these colonies, and the inmates not only farm, but make wagons, carriages and wearing apparel. All of these colonies are more than self-supporting.

Holland also has a large institution at Veenhuisen, which is self-supporting from the products of agriculture, forestry and floriculture.

Thirty-four of these labor colonies exist in Germany. At Viefeld there are over 2,000 acres. Here again the population is of those

<sup>1</sup>The entire committee is as follows: Edwin M. Abbott, Esq., Philadelphia, chairman; William H. Baldwin, Esq., Washington; Commissioner Katherine B. Davis, New York City; Dr. E. Stagg Whitin, New York City; Hon. William N. Gemmill, Chicago; Hon. Robert Ralston, Philadelphia; Dr. F. W. Sears, Burlington.

## EMPLOYMENT AND COMPENSATION

committed for minor offenses, and those who voluntarily apply for work, the result showing a good profit over all expenses of maintenance.

In this country the farm system has been progressing very rapidly; Cleveland receives prominence from the splendid system which it has equipped, known as the Cooley Farm.

Louisiana has been very successful with its system, and has established three large farms which have been more than self-sustaining, although they were somewhat handicapped in 1912 by great floods. The raising of farm products, cotton, sugar-cane, live stock and the development of the lumber industry have all been carried on successfully there. It is to the lumber industry that the present board of control is turning its greatest attention. As stated in a recent report, "We can secure better returns than in almost any other line."

Other states that manage convict farms with success are North Carolina, Mississippi and Georgia, where corn, wheat, peanuts and cotton are raised; Texas, where not only food products are raised, but workshops have been established where articles are made and repaired; West Virginia, where farming, cattle raising and dairying are the forms of employment; Delaware, Arkansas, Alabama, Florida and Virginia afford other illustrations of successful farm colonies.

In Minnesota, just outside of Duluth, is a unique prison camp; 1,000 acres have been secured where barns, toolshops and living apartments have been erected. The men cut the lumber and operate the sawmill. Stone is quarried and converted into road material. Land itself is developed and improved, and the plan is to dispose of it and to move on to another portion of the state for a similar operation. This system is conducted jointly by a commission representing both the county and city of Duluth.

Michigan, Massachusetts and New York also have established farms for minor offenders, drunkards and vagrants, while among the western states Oregon, Oklahoma and Idaho have done likewise. Indiana is another state where the convict farm has just been established.

In many of the states, however, a new system is taking hold. As can be seen from a review of what has been done in this country, employment has been provided principally for those guilty of minor offenses and drunkenness. The employment of the long-term prisoner, one who must be supported by the state and whose dependents are handicapped through his incarceration, is the most vital question of today. Reduction to the state of the cost of keeping these men, the improvement of their moral condition and the fitting of them for future good citizenship are in the direction of the evolution now going on.

Pennsylvania has established a new Western Penitentiary in Centre County on a 1,500-acre tract. The buildings are being erected and the grounds laid out by long-term prisoners from the Western Penitentiary, now located in Allegheny County, all of whom are working without guard, upon the honor system. A commission has just been appointed which will evolve a system of employment of prisoners in all of the institutions of the state, and take up the question of compensation for their labors and the distribution of the compensation.



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In the state of Washington "honor camps" have recently been established in which prisoners work upon the highways.

In South Carolina the convicts are employed upon the highways and the amount of their work is taken into consideration in commutation of sentence.

Many of the states in recent years have enacted laws providing for the support of wives and children who have been deserted, by arresting and sentencing the delinquent to some class of labor which will bring a return for the support which the state metes out to the dependents. Most of this work is road work or the making of road material. California had such an act passed in 1911, but has never enforced it; Pennsylvania, in 1907, granted the various counties of the state the same privileges of working the inmates of county jails upon the roads, even for greater offenses than enumerated above, but only three counties have ever been known to make use of this privilege since that time.

The above system seems to be the connecting link between the present and the future when all inmates of all penal institutions shall be compelled to work. The laws in nearly every state in the Union requiring separate and solitary confinement have lately been either modified or repealed, and prisoners are now allowed to congregate for the purpose of worship, labor, recreation, etc. This removes the main obstacle to the employment of all prisoners.

In New York and Massachusetts, today, prisoners in the penitentiaries are employed in manufacturing articles to be used in almost every department of the state government as well as supplying clothing, utensils and other necessary equipment for the inmates of state institutions. Even wrought-iron work and material for building construction are produced. The state of Ohio is pursuing the same course. The catalogues which are distributed by these institutions and furnished to the various departments of the state from which they must purchase their supplies, are as extensive and elaborate as those furnished by the largest mercantile houses in the country.

The question of compensation for this labor has not been effectively solved. In Ohio they are paying men one to three cents an hour, according to the grade of their work.

Pennsylvania has a system of compensation for services rendered in the limited forms of employment allowed there, but this can be earned only by those of the 35 per cent allowed to work, and who work overtime. A system of payment which could be made in the various counties of that state has only in rare instances been adopted and utilized.

Many states have the contract system, but this is rapidly passing away. The unfavorable criticism that has been aroused by the contract system and the methods employed by contractors has probably stopped any further spread of that disease. The state-use system or the institutional-use system have sprung up in its stead.

To manufacture furniture or supplies and to raise products which can be used in charitable or penal institutions of the state or in the subdivisions of the state is the purpose of these systems. The institu-

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tional-use system restricts this supply to the institutions themselves. The state-use system is much broader, and consequently gives greater field of demand for supplies.

Minnesota State Prison, as far back as 1898, established a method of compensation to prisoners and provided for distribution of the funds; and in New Jersey a system of credit, not to exceed fifty cents for each working day, has been established for the support of dependent families.

Washington, in 1913, adopted a similar law, and in Utah unmarried prisoners are credited with a sum not to exceed 10 per cent of their earnings, and married persons with 25 per cent of their earnings, the board of control to disburse the sum among their dependents.

Texas allows ten cents a day as a credit to the prisoner, to be paid to his family dependent upon him; while in South Dakota a recent law provides for the disposition of the earnings of prisoners.

In Michigan, North Dakota, Kentucky, Delaware, Oregon, Nebraska, Wisconsin and Rhode Island laws have been passed providing for the employment of prisoners, with a provision that a small sum shall be awarded to dependents for their maintenance.

Other states have laws dealing with this subject, but with no uniform system either of payment for services or for the disbursement of the fund accumulated by the prisoner.

In the District of Columbia the commissioners have taken under consideration the enactment of legislation which will permit payment to all prisoners sent to their farm at Occoquan, in Virginia. Here, not only is a farm established, but various workshops, and manufacturing plants are being encouraged, and those interested hope that a uniform system of payments will soon be authorized for all of the inmates.

In Pennsylvania, the commission is considering the recommendation of a uniform system of payment by piece-work or per hour. This wage is to be of sufficient magnitude to allow of a fractional deduction for cost of conviction, the cost of maintenance, the support of dependents, and the raising of a fund to be given to the prisoner upon discharge. The dependents will be paid through an order made in the home county, which shall be certified to the keeper of the institution, and no payment shall be made in lump sum, but shall be by fractional part of the income of the prisoner.

With the many systems therefore in use, and with the many more in contemplation, it is a difficult matter to submit to this Institute any opinion as to what would be a model act. However, the committee have united upon many of the most important features of the entire question, and would therefore recommend as follows:

- (a) That all prisoners should be employed.
- (b) That all prisoners should be compensated.
- (c) That the state-use system is the best method for utilizing the results of the labor of prisoners.
- (d) That the contract system should be abolished.
- (e) That dependents of prisoners should receive a substantial portion of their compensation.

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(f) That none of the goods manufactured should be sold in the open market.

(g) That a portion of the compensation paid prisoners should always be retained for the prisoner, to be given him at the time of discharge.

(h) That the state should be reimbursed for the cost of maintenance of the prisoner.

DISCUSSION.

PROFESSOR TODD, of Pittsburgh—In general, I agree with the report of the Committee, but I find in it two things that I should rather hesitate about seeing the Institute commit itself to at this time. In the first place, I do not believe, from the showing made by the State-Use System—much as I sympathize with it—that we should give our unqualified approval to that system. I think if Mr. Abbott's Committee had gone out as far as Minnesota and talked with the Warden of the Stillwater prison, he would have found objections to the State-Use System, and he would have seen the admirable system which they have there, whereby the state assumes responsibility for its goods in the open market. Then, too, the experience in Illinois has suggested a number of objections to the State-Use System, though many of them might perhaps be overcome by improving the quality of administration. For example, the University of Illinois is obliged to buy its furniture from the penal institutions of the state, and also is obliged to have its printing done in them. I remember conducting the work of some of our classes for a whole semester where we had to use tables that were almost falling to pieces because of the poor quality of their construction, and chairs that were rickety. The veneering was very badly done and, generally speaking, they were badly put together. Then the printing came to us sometimes in such shape that we could not use it, and we had to get authority to enable us to send out and have it done in the open market.

It seems to me that before we commit ourselves definitely to this exclusive system by any such vote as would approve the report of the Committee as a whole, we must make a proviso that through the cleaning up of politics, or through a special course for prison officials, some system shall be devised whereby men may be trained to meet successfully the arduous economic and administrative requirements involved in a workable State-Use System.

I believe, in the second place, that most of the wardens of our prisons would oppose the idea of wholesale payment of compensation to prisoners. At a meeting of wardens last year in Indianapolis, which I was privileged to attend, a number of wardens said that while they might accept it as good in principle, they questioned how, from an economic standpoint, the fund was to be derived from which compensation could be made.

Instead of committing ourselves finally to the principle of the payment of wages to prisoners, why not say, if we approve of the principle in general, that we will accept it in this form: That we approve of the proper care of the dependents of prisoners out of the earnings, if possible, of the prisoners themselves; and, if that is not possible, then make the care of those dependents a charge upon the public charity funds of the state. While it is

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true that crime and dependency proceed to a certain extent from similar sources, yet I think from the standpoint of administration we may somewhat cloud our vision if we mix up too closely these two branches of administration—penal and charitable.

In general, then, I accept the spirit of the report; but I should have liked to hear some discussion of the financing of the system.

MR. BALDWIN, of Washington, D. C.—I believe that all prisoners should be employed, and if there are no dependents of a prisoner, I think the state should be reimbursed for the maintenance of a prisoner. As Professor Todd has intimated, there is another question here, and I disagree—respectfully, of course—with the statement of Item E in this report, that dependents of prisoners should receive a substantial portion of their compensation. I would have phrased that differently, and would say that the dependents of prisoners should be the primary beneficiaries of their earnings. I think, too, that when the state takes an able-bodied man who has a family dependent upon him, the state ought to see that some part of the earnings of that man go to the support of his family. Mr. Parker of Massachusetts spoke of the law passed there three years ago. I have a report from that state, stating that the amount paid for the support of prisoners rose from \$6,000 to \$19,000, but that they had collected from men under sentence for non-support \$140,000. So that this compensation that goes to the prisoners, and is paid at the rate of fifty cents a day to their families, is a direct help to the state in getting \$140,000. An effort was made several years ago to have this same law passed in Pennsylvania, but there were some influences there that opposed it, and I was much interested in hearing from Mr. Abbott last year that as a member of the legislature he had opposed it, because there was no provision there for the employment of the prisoners, though there is a law for making them work on the roads. Now they have passed instead of that a permissive law, which works out very well in Pittsburgh, and something of the same kind has been done in Philadelphia, but I am informed that it is not enforced generally and that the compensation feature interferes with its enforcement.

What was said in the report about Pennsylvania gives me a chance to say what I think about the whole situation. I would not give the privilege to the counties to employ these prisoners, but I would make it obligatory. That puts the responsibility on the state of getting a reimbursement for the amount expended by it in the maintenance of these prisoners. Reference was made to the fact that California and Oregon had passed a similar law, but I believe they have not been put in force, because the law in each case was permissive, and, besides, it made the compensation a dollar and a half a day, and that was too much. I believe in beginning on the compensation feature as part of the non-support law. As Mr. Abbott has stated, it seems to be the connecting link between the old system and the employment of all prisoners, and it has worked so well here in the District of Columbia since it was started that I sincerely hope the recommendation that all prisoners be compensated will be adopted for the District.

As to the recommendation that none of the goods manufactured in the prison shall be sold in the open market, I would not put it that way. The prisoner should be employed and his dependents compensated. Then after

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that, if there is anything left over, it might be accumulated for the benefit of the prisoner upon his release. Now, if prisoners are to be compensated, the goods that are manufactured by them will have to be provided with a market. I believe in the State-Use System. I would not say that none of the goods shall be sold in the open market. We can express a preference by the declaration that the State-Use System is the best system. Also that a portion of the compensation paid to prisoners may be retained, to be given to the prisoner at the time of his discharge. Also that the first application of the compensation paid to the prisoner shall be to the support of his dependents. The dependents of the prisoner should be made the primary beneficiaries of his earnings.

I have been speaking in a general way about this report. I do not want to be understood as being out of sympathy with the general statements of the Committee, but one is at a disadvantage where there has been no melting-pot into which can go all the ideas and thoughts of the members of the Institute.

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On motion by Mr. MacChesney of Chicago the report was received and recommitted to the Committee for further report.

## RACE BETTERMENT AND THE CRIME DOCTORS.

F. EMORY LYON.<sup>1</sup>

The subject of race betterment is invariably approached from either the subjective or the objective standpoint. The forces working toward race advancement are likewise those imposed from without, or the impulses awakened in the individual. All real and lasting progress doubtless arises from such educational and spiritual forces as each person is made capable of expressing.

The prohibitory influences imposed by society upon the individual, on the other hand, are material, temporary and palliative. The external influences seem to be more effective merely because they are more obvious. Few have the discernment to perceive, or the patience to await the working out of the more fundamental causes of race retardation and the course of age-long evolution. In our haste, therefore, it is natural that we should seek some short cut to the desired goal of race improvement.

Following this instinct, innumerable panaceas have ever and again been proposed by which it is hoped that the unhurrying process of civilization may be quickened. The path of progress has been strewn with experiments, social reforms, political programs, and religious cults that seemed to contain transcendent power in accelerating human perfection.

In society's effort to cope with the problem of crime the same process has been apparent. It is perhaps to be expected in this field, where righteousness seems farthest from realization, that special ingenuity should be exercised to bring about a speedy reversal of the downward trend. The problem has been attacked, therefore, from almost every angle—except adequately from within the social body and the individual soul. Crime doctors galore have arisen in every generation and every country to proclaim a sure specific for the eradication of anti-social conduct, and the prevention of delinquency. If crime is "the feverish pulse-beat of a sick social body," as one has said, the most of these schemes have been about as effective as to check the pulse-beat suddenly in a fever rather than to remove the cause of the fever. Penology itself, in so far as it has been an effort to expunge crime by external force, has been one vast surgical operation. Like much surgery, therefore, it has been either experimental or a post-curative process. In any case, and at its best, the surgery is a poor substitute for prophylaxis. Nevertheless, because of our

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<sup>1</sup>Superintendent of the Central Howard Association, Chicago.

remissness in the matter of crime breeding as well as in disease producing, perhaps the crime doctors are needed and should have their say.

To be sure most efforts to curb crime have proven far from satisfactory. The severest punishments of the past, based on the principle of retaliation, have been ineffective. The police power of the state, however powerful, has resulted only in temporary control. It has not greatly deterred the offender or prevented the awakening of criminal impulses in others. In view of this failure of statesmanship in dealing with the problem of crime, the scientists have more recently essayed various solutions. The movement in this direction is in keeping with the modern idea of dealing, not so much with the offense, but with the offender, with all his limitations and possibilities. From this standpoint, as in all true science, we can dispense with precedent, with technicalities and prejudices, and determine the facts. This done, and we must still expect, in the spirit of science, to submit these facts to classification, to experimentation and imperfect efforts to delete the dross of corruption and conserve the gold of character.

Just now we are in the midst of this period of research and discovery. One will tell us that an operation upon the brain, or rather the skull, has worked wonders in transforming character. These occasional cases of removing brain pressure, however, can hardly be held as ground for sweeping generalization. Report is made of the action of Dr. Voronoff, a European physician, in grafting the thyroid gland of a baboon upon a feeble-minded boy, with the statement that the result was "immediate and progressive." Dr. Voronoff says: "Give an imbecile a thyroid gland in good working order and he will display the keen intelligence which he actually possessed but which remained inert because his brain did not receive the necessary stimulus."

Dr. E. H. Pratt, of Chicago, has stated that, if given an opportunity, he could cure most forms of crime by an operation upon the sympathetic nerve. None of these proposed panaceas, it seems, have won sufficient recognition to gain public attention or the adoption of legislation for their application.

In providing for the sterilization of certain criminals, however, several of the states hearkened to the recommendations of the crime doctors. Twelve states of the union now have laws making operations legally possible upon certain specified feeble-minded and criminal wards of the state. The fact that two laws passed have been held

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unconstitutional and that in half of these states the law is inoperative, would seem to indicate that it is at least in advance of prevailing public sentiment. It is contended that sterilization of the unfit is not permanently injurious and that it will effectually prevent their reproduction. As to the application of this method to the feeble-minded, I do not undertake to speak with knowledge. That feeble-mindedness should not be multiplied goes without saying. The experts tell us, however, that the idiot and the imbecile are sterile, and that it is only the subnormal moron we have to fear. In any case it is plain that custodial care for all would prevent the perpetuation of their kind, and at the same time relieve society from contact with their varied undesirable qualities.

On the question of crime prevention there is still more ground for qualifying our expectations. Advocates of the measure have argued, with apparent plausibility, that the sterilization of criminals will manifestly forestall their reproduction, and, *ipse dixit*, crime will cease. On broader inquiry, however, this conclusion may not seem so certain. In the first place the law has not, and is not likely to apply to all inmates of penal institutions. Much less can it include the still larger criminal population outside, on the verge of apprehension, or perhaps destined to immunity. Yet from these, if criminals are born rather than made, the criminal population of the future will continually reappear. As a matter of fact, the best scientific knowledge indicates there are no born criminals, that the species is the spawn rather of unfit training and unwholesome social conditions.

The laws providing for the sterilization of prisoners have invariably been limited to habitual offenders. But it is a well known fact that the typical habitual criminal is notoriously void of offspring. He seldom marries, and in his intervals of freedom, his indulgence is in the illicit brothel, and therefore fruitless. Only as it may apply to the rapist is there apparently any direct connection between the performance of this operation and the possible repetition of crime, and these degenerates constitute but one or two per cent of prisoners. Unless it can be more fully demonstrated, therefore, that sterilization will really be effective in lessening crime, we can scarcely expect other states will adopt the method, or that present legislation will justify itself in the future. Furthermore its proponents must prove, not only that the treatment is beneficial in a comprehensive way, but that there are no counteracting and injurious effects. This has by no means been done. If, as claimed, the operation merely prevents procreation, but does not lessen the desire for sexual functioning, the



limitation is quite likely to be perverted to unworthy indulgence, rather than to be used for race betterment. The possibilities in this direction as will be seen, are great and menacing.

As yet we have no definite knowledge of the ultimate physical effects of sterilization. Widespread and continued observation may reveal progressive debilitation and decrease of initiative. These defects would prove fatal to economic and social fitness.

Among the unanswered questions involved in the problem of sterilization, therefore, we may note the following:

1. Are criminal traits heritable? As yet there is no agreement among scientists, and many of the highest authorities deny it.
2. If heritable, would the sterilization of a small per cent of those in custody have any appreciable effect in the prevention of crime?
3. Is it morally permissible for society to mutilate its members, or to prevent individuals from producing their kind?
4. If permissible, can the state be entrusted to impose the practice without the dangers and practice of tyranny?
5. Even if socially efficient, would sterilization accomplish its purpose without making the individual operated upon a greater menace to the community?

If we hear no ready response to these fundamental and important interrogations, may it not be better to rely upon the broader and more constructive program for the prevention of crime? The way may seem longer and more expensive, but of what avail is the seeming short cut, unless it leads to a certain and effective goal.

A few of the measures we know to be effective may be cited herewith:

1. Life segregation of those proven to be a social menace.
2. Restrictive marriage laws and customs.
3. Eugenic education of parents and the public.
4. Social restriction and personal supervision of the mentally deficient who are at large.

This more positive program will unquestionably require greater patience, and entail an infinitely larger service upon society. But the easier way is rarely the best, and the dream of race betterment makes the harder task worthy the most painstaking effort.

Two quotations will indicate the direction of these more intricate, intensive and underlying influences essential to the wide-spread and lasting prevention of crime. One is from the pen of Julian Haw-

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thorne, the author-prisoner, in his recent book the "Subterranean Brotherhood." He says: "What the criminal instinct or propensity in man needs is not seclusion, misery, pain and despotic control, but free air and sunlight, free and cheerful human companionship, free opportunity to play his part in human service, and the stimulus, on all sides of him, of the example of such service."

The other quotation is from Dr. S. G. Smith, in his Presidential address to the American Prison Association. Directly declaring our need of deliverance from the purely physical, material, objective efforts at race betterment, he appeals to the spiritual sanctions and the all powerful interior possibilities. "Possibly after all," he tells us, "there are other elements in man besides what the physician is able to take account of. The conscience, social and industrial, may have a place. Law may be at once the expression of intelligence and of conscience. The measure of civilization by which it has held men and women to higher and higher account for their deeds is not perhaps wholly wrong. Instead of being simply the greatest of animals, it may prove that man is something more, and that the ethics of the race have a real foundation not alone in the thing we call the security of society, but even more in the thing that is fundamental to the dignity of man."

## NECESSITY FOR A REVISION OF OUR CRIMINAL PROCEDURE.<sup>1</sup>

EUGENE LANKFORD.<sup>2</sup>

As I initiated this meeting of the judges, I shall give my reasons for doing so. This I shall endeavor to do as briefly as possible, but the nature of the subject demands a somewhat lengthy statement.

We wish to ascertain, if possible, if our courts and the law accomplish that which they were designed to accomplish; and, if not, what should be done to remedy the defects.

If we are to sit as jury and judges upon our own cases, we must be very unselfish indeed. In order to accomplish anything we must for the time forget the law and its technicalities, as we have been trained to look at them, and consider what I shall say from the viewpoint of the ordinary, intelligent, common-sense citizen. Habit becomes part of our nature, and we have been trained to think in legal terms, just as we think in English.

This is the real difficulty in the whole problem—our training and habit of thinking. We think too much in legal terms, and not enough in common-sense English. We were lawyers before we were judges; and after we became judges, the lawyers kept up preaching "the law" to us, and reading precedent after precedent; and the Supreme Court is constantly reminding us that it must be done "just so," or it is "reversible error." Then it should be no wonder that we think in legal terms.

However, we shall accomplish nothing unless we can look at the problem from a common-sense, every-day-citizen point of view, for the law is for the guidance of these common-sense citizens.

Whatever I shall say must not be considered in any sense a criticism of the integrity of any of our courts; for our judges are intelligent, honest and honorable; and the fault, if fault there be, is in our training, professional habits and the system under which we labor. But while this is not a criticism of our courts and judges as such, I shall assail our criminal laws and procedure and our penal institutions, for I think they are a disgrace to thinking, reasonable men in this civilized age. To say that we are a hundred years behind the times in our criminal procedure and the treatment of criminals, is putting it too mildly.

If we were to read some of our case law to an intelligent, reasonable man who is not a lawyer, he would think that we were reading some of Dickens' stories in which he ridiculed the technicalities of the courts of a hundred years ago. This is not exaggeration; but is a burning, shameful fact.

Commerce, mechanics, the science of medicine, chemistry, and all the practical arts and sciences are changing methods and procedure every day to suit the thought and necessities of modern life, but the

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<sup>1</sup>Read before a meeting of judges in Little Rock, August 8.

<sup>2</sup>Judge of the Circuit Court, DeVall's Bluff, Ark.

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courts keep on citing authorities and precedents that hampered justice in the courts a hundred years ago.

A few years ago the doctors "cupped" and bled their patients for various diseases, but when they learned that they were wrong, they quit it. When a child had diphtheria they burned his throat with caustics, but when they learned that instead of doing the patient good they were injuring him, they quit that and administered anti-toxins to kill the pathogenic bacteria and cure the patient.

But our courts are still quoting Chitty on Pleadings and Rapalje on Larceny, and other authorities so old the memory of man runneth not to their origin.

A short while ago I was on board an old English convict ship over a hundred years old, and the captain in charge told me a history of the ship and many of the noted characters who spent long sentences in the dark, foul dungeons in the hull of the ancient craft. There were "dark holes" way down in the lower part of the ship where they would chain a convict with his hands behind him in such a position that he could not sit, stand nor lie down, and without light and with very little air, he would have to stay there for weeks if he lived that long. If he survived that treatment, he was subjected to still more trying tortures to rid him of the evil spirits that caused him to commit the crime. All the old instruments of torture and dungeons were still there just as they were in those days of ignorance and cruelty.

I saw the dungeon in which one man was placed under a seven years' sentence for being drunk and disorderly, a crime for which one might get ten dollars and costs in the police courts in Little Rock. He went mad and died before the time was out.

Prior to the last century even our English-speaking people punished nearly all serious crimes by death; and those they did not kill they thrust into dark dungeons. It was only a hundred years ago that the penitentiary was thought of and built. And even after the first one was built, in New York, bills were introduced to abolish it, because the convicts had too much fresh air and liberty in it, and the punishment was not severe enough. North Carolina was the first state to give the convict more fresh air and sunshine by putting him on the state farm. The convict lease system has about passed from the stage of civilization; and I think the penitentiary, as now conducted, will follow as soon as we learn more of the cause of crime and the humane method of preventing it and curing the criminal.

So, when I say that our "criminal procedure" needs a radical change, I mean the way we proceed with the accused from the time the state takes him in charge till he is released.

The old theory of crime and its punishment was that when the law was violated, the offender must be punished, and often very much out of proportion to the offense. The object of the defendant, then, was to escape this punishment by any method or means possible. That was the issue, the battle ground. It became a sparring match between the state's attorney and the lawyer for the defendant. A trial in our courts has been described as a contest to see which side

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has the best lawyer. It is a game of chance, and the technicalities are the points. The Supreme Court is the referee to decide which one has won on points.

Reformation of the defendant, or the proper treatment of his "disease" or malady is forgotten. His case is simply used as the subject-matter of the legal contest. Then when the state succeeds in winning the contest, the theory of punishment in our prisons is all wrong.

Under our system, when the officers punish a criminal, they assume, *first*, that the offender when punished will not repeat the crime; *second*, that others, seeing that he was punished, will be deterred from committing crime. Now, if that were true, our present penal system might accomplish something, but it is not true. The system is based upon the false theory that the man who commits crime is reasonable. The law-makers expect the criminal to look at punishment as they do. All crime is unreasonable, and the criminal is a moral defective or diseased person. The old theory is that all who commit crimes are criminals at heart, and that is not true. There are many men who commit crimes who are really not bad, and if properly treated would make good citizens, but if not properly treated at the right time they may become hardened criminals.

Our present system is a failure. Every up-to-date, thinking man must admit that. The law does not prevent crime, nor are we properly treating those who commit crime so as to make better men of them.

Ex-President Taft said that our present administration of the criminal laws in this country is a disgrace to civilization. I need not tell you which one of the ex-Presidents said: "The fault is with our judges, who are either corrupt or are so blind to the problems of the times that they obstruct progress and deny justice to the great body of our people."

Governor Fielder of New Jersey said: "The sentiment of these enlightened times demands a change in the care and treatment of prisoners. The idea that offenders against the law can be reformed by confinement and punishment alone, is obsolete."

There is a movement now to establish a Federal Office of Prisons, for the purpose of studying proper methods of treating those confined in federal prisons.

An effort is being made, too, to abolish Sing Sing prison, and convert this antiquated mausoleum into a hospital, if you please, where they may make a scientific study and diagnosis of the defective persons committing crime in the state of New York. What a wonderful awakening of humanity and science.

Morefield Story, once president of the American Bar Association, said: "Our prisons are manufactories of criminals, and it is time that we changed our whole method of dealing with them."

Justice Peckham of the Supreme Court, in a dissenting opinion, referring to the court's decision reversing a case on a technical point, said: "I think such a result is most deplorable."

## REVISION OF CRIMINAL PROCEDURE

Collier has published a series of articles about the criminal laws of America. The latest of these is "The Scandal of the Lawless Law." The title indicates what the laymen think of our law.

The courts of California became so technical that the people of that state adopted an amendment to the constitution, as follows: "No judgment shall be set aside or a new trial granted in any criminal case on the ground of misdirection of the jury, or improper admission or rejection of evidence, or error as to any matter of pleading or procedure, unless after an examination of the entire cause, *including the evidence*, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."

Now, that came from the people and sounds like justice, common sense and even science.

Now this is what the Supreme Court of that state did: They reversed a case after the jury had decided the defendant was guilty and needed treatment by the state, because forsooth, the prosecuting attorney left the letter "n" out of the word larceny in the indictment.

And they reversed another case because the indictment said: "Lee Look had feloniously, etc., murdered Lee Wing," without alleging that Lee Wing was a human being, although they had gone through the evidence which showed that he was a human being, and the jury had decided that he needed punishment for it. That came from the Supreme Court, and, most humbly begging their pardon, I will say that it sounds like silly nonsense. As Justice Peckham said, it is most deplorable. Yet these judges were learned men. All judges are learned, honorable men. And our court cites California court as authority.

It was said by a Californian before the amendment quoted was adopted, "As it is now, the common people have lost confidence in the courts; criminals count on escaping punishment; crime increases, and the state is put to a vast expense in fruitless efforts to prosecute offenders."

The people of the state of Oregon have an amendment to their constitution similar to that in California, and so have the people of Wisconsin.

Canada has a simple procedure. This is their form for an indictment for murder: "The jurors for our Lord the King present that John Doe murdered Richard Roe at Toronto, on February 1, 1912." Why is that not sufficient?

Compare the simplicity of this indictment with the technical rule of our court in the Ray case, where our court reversed the verdict of a jury and judgment of the court below, because in the indictment there was "nothing but the general and indefinite charge that the defendant killed and murdered deceased with a double-barreled shotgun loaded with gun powder and leaden bullets." If one were to tell you this moment that someone had loaded his double-barreled shotgun and had killed and murdered your wife or brother with it, it would not sound very vague and indefinite to you, but such is the wisdom of our criminal procedure.

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The people of Maryland have awakened to the necessity of a change in their procedure, and the legislature of that state has created a "Penal System Commission" to investigate their system and make needed changes.

A man named Pope in Alabama was convicted of murder by five different juries of his own selection, and each time the Supreme Court of that state reversed the case, except the last time. Think of the perseverance of that prosecuting attorney. The case was reversed twice because a witness was permitted to say that a certain shoe or foot could make a certain track. The jury were supposed to be sensible men and able to weigh such evidence, but that was not the way to do it, according to precedent way back in the dark ages, so, of course, the whole case must be reversed. We cite that court as authority, too.

Walter Hickey murdered Tom Dixon in Texas in 1903; the prosecuting attorney was faithful to try the case in the Circuit Court six times, but he, the juries and trial court were unable to try him "according to law," and finally the prosecuting attorney in open court stated that he would give up the task, as "it appeared impossible to conduct a trial in such a way as to meet the requirements of the reviewing court." Think of it! The law too technical to punish a murderer!

The trial judges of the state of Georgia have recently, in convention, passed resolutions looking to making needed changes in their legal procedure. And judging from some of their technical decisions to which I shall refer later, they certainly need a change.

A federal judge in Fort Smith recently quashed an indictment against Alva Gunn, so the papers say, because the letter "o" was left out of Wagoner. He was charged with robbery, but it matters not about the crime nor the criminal, if Wagoner is mis-spelled. It is fatal to leave "o" out of Wagoner; plain Wagner won't do. Yes, that's the law. Judge Youmans should have read Justice Smith's opinion in the Smith case, 40th Ark., where he said: "We are told in Holy Writ that 'the letter killeth, but the spirit giveth life.' He who sticks in the letter of the law goes but skin deep."

The Supreme Court of the United States recently reversed the case of *Crain vs. United States* because the record did not affirmatively show that the defendant was formally arraigned. We know he must have pleaded not guilty or there would have been no trial; that is all the arraignment is for—to see what his plea is. The record showed all the trial to be regular, and the jury found him guilty, and decided that he needed treatment by the government, but this little "flaw" in the record was fatal.

The court of Delaware reversed a case in which a man was convicted for stealing a "pair of shoes," because the evidence showed that both shoes were for the same foot.

We notice a very salutary effect of modernizing the criminal laws in the older countries. Judge Story said that in 1909 there were but 19 murders in the great city of London, while in the city of Louisville, Ky., a small town in comparison, there were 47 homicides, and only one of the 47 was executed for his crime. Too many "flaws" in the procedure. No wonder we hear of the "Scandals of the Lawless Law."

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If, in a state where they have capital punishment, only one out of 47 who commit homicide is executed, a murderer's life would be a fine risk for the insurance company. One of the writers in a current funny paper said that they are the very best risks if they are able to hire a good lawyer.

Our laws against murder are severe enough, but they are not enforced, nor will they ever be until our courts quit quibbling over words and phrases, and study the man at the bar and his needs.

We have strict laws against gambling, but when the officers make their annual raid on the gambling dens, it is so unusual to see the houses "dark" that the newspapers even notice it and mention the fact in big headlines. Our laws against fraud in elections are very drastic, but the ballot thief laughs at the law. Study the Kelly case, 105 Ark., and Hester case, 80 Ark., for the cause of this lack of respect for the law.

In a neighboring state they have state-wide prohibition, but the saloons even refused to close up on Sundays, and they thought an officer was committing an outrage to arrest one of them. Yes, the law was strict enough, but it was conceded that it could not be enforced.

A banker recklessly squanders a million dollars of the people's money, but the criminal procedure is so lame he is not even tried. County treasurers and bankers all over the land steal the people's money entrusted to them, but they feel safe behind the technicalities of the law. The more they steal, the safer they are.

Houses of ill fame are permitted to run in public view, and out of these dens of vice and disease go many subjects for the hospital, asylum, and the penitentiary, but the inmates do not fear the law.

We have very stringent laws against trusts, and the penalty against those who violate these laws is severe; but who fears them? It is common talk that you "cannot do anything with them; that the laws cannot be enforced. They never think of obeying the laws of Congress or of a state, till a "test case" goes to the Supreme Court. *The law-making power makes the law they want, but that is not so important to the violator of the law as what precedent the Supreme Court is going to follow in construing it.* When the Standard Oil was "busted," the magnates actually got together and discussed the question as to whether or not they would obey the court's decision; and I think the authorities have decided that they have it so mixed up in the tangles of technicalities now, they don't know what to do. If our citizens respected the law, there would be no trusts. They know the law is so full of technicalities that the chances are all in their favor. So thinks the criminal.

Under our laws and procedure the chances are that the real criminal, if he be shrewd, will escape punishment and be actually rewarded by his friends. Caleb Powers was convicted by three juries of his state, and twice they said that he should die for his crime, but thanks to Kentucky criminal procedure, he escaped and was afterwards elected to Congress.

Governor West of Oregon said: "My belief is, that three-fourths



of the men sent to the penitentiary are not criminals at heart, are really not any worse than thousands who, through some turn of fortune's wheel, escape the stigma of the penitentiary."

Governor Foss of Massachusetts once said: "In all seriousness, the managers of my shops and factories make a more efficient and intelligent assortment and reclamation of scrap metal than the laws have generally made of living men and women, who have been thrown upon the scrap heap of our prisons." Governor Foss is pushing the reformation of the procedure and prisons in his state, and they have a commission studying needed changes now. He says the politicians are against any change. Why? The reason is plain to me. The more complicated, the more technical the laws are, the more dependent the ignorant and helpless class (and this is a large class when it comes to law) are upon the ruling of influential class. Of course, the political boss would have it so he can take care of his men. That is what makes a boss in politics.

We all know that a man may embezzle and steal all he pleases, if he be a financier and stand "high in the community," he is not in any very great danger. The turn of fortune's wheel lets him go free. If the state succeeds in pushing him through the technical labyrinths of the law, and gets a conviction, influential friends will convince the governor that a pardon is necessary; while the poor, ignorant, friendless man who takes a three-dollar pig for his hungry children is thrown into prison and forgotten. A man who is intelligent and does not need to steal, and recklessly and feloniously appropriates other people's money or property, needs punishment; but he is the one to escape under our procedure, and we all know it. The poor, ignorant man, whose training the state has neglected, and whose destitute condition is perhaps brought about by the conduct of these high financiers, is the one who is punished. This is not right. It is not just, and should not be tolerated.

Attorney General Cosson of Iowa said a short while ago, that "For years the technicalities of the law and defects in our criminal procedure have been denounced, but mere denunciation, in itself, amounts to nothing in the absence of some constructive methods of relief." He said the "conservatism of the lawyers has thus far prevented our bar association from taking favorable steps, etc." Some "jackleg" lawyers think it might hurt their business if the law is simplified. It would hurt the business of the "jackleg" lawyer, but would not affect the business of the lawyer who seeks justice for his client.

Nathan William McChesney, a prominent member of the American Institute of Criminal Law and Criminology, said two years ago: "The growing distrust on the part of a large portion of the country of the efficacy of our entire system of dealing with the criminal is apparent. This distrust is an ominous symptom, as it is an endorsement of the saying of Solon two thousand years ago, that 'Laws are like spider webs, which catch the small flies, but through which the great flies break.'" He stated further that his own state, Illinois, has

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the procedure of England in the time of George the First, the last vestige of which England abandoned years and years ago.

In speaking of the old rut in which our legal procedure has been moving in the past, the editor of the "Journal of Criminal Law and Criminology" recently said: "It is not many years since the great mass of the people seemed to regard the administration of the law as an occult science, whose defects and shortcomings however lamentable, must be regarded as necessary and unavoidable evils, which, for some unknown but entirely sufficient reason, must exist and be endured. If the courts and the lawyers said that such was the law, it was accepted with resignation, and with the reflection that there must be some good reason which the judges and the lawyers in their inscrutable wisdom knew, but would not divulge, why the law must work injustice."

The priests used to be the keepers of the law as well as the religion of their people, and until recent years there was among the people a superstitious awe of the law and its mystical forms and procedure. This technical mystical law and procedure could not be loved nor even respected by the people.

It is important that our laws be simplified so that the innocent may be more speedily released from unjust arrest and prosecution; and the guilty may be more certainly punished or reformed. The strong should be made to fear the law, and the weakest of our citizens confidently look to it for protection. It should be so simple and plain that everyone could understand it.

It is not the severity of the punishment that deters the criminal, but it is the certainty of it; but what is still more important, if our laws were such that we could act promptly and summarily with the beginner in crime, we could save the state many good citizens, and the cost of many long trials. The time is near when it shall be so. The country is full of unselfish, thinking men at work on this problem now.

A few years ago the "American Institute of Criminal Law and Criminology" was organized in this country for the purpose, as stated in their constitution, "to further the scientific study of crime, criminal law and procedure; to formulate and promote measures for solving the problems therewith in the administration of speedy justice." The membership of this institute is composed of some of the leading judges, lawyers, doctors, scientists, presidents of universities, experts in penology, anthropology, psychology, and every other science that throws any light upon the conduct of man. They are going at it right. They are looking for the cause of the disease of crime, and the best method of treating it. Before we can formulate any intelligent method of treatment of the criminal, we should first understand the criminal and ascertain why he committed the crime.

When a doctor of medicine is called to treat a sick man, he first makes a diagnosis of his case before he treats him. If he have a fever, the doctor tries to find out what caused the fever. Our family physician can more readily make the diagnosis because he knows our weak points, our habits and history. When the doctor thoroughly understands the nature of the disease, it is not so difficult for him to treat the case.

A criminal is a sick man—sick morally. The penologists call him a "defective." You have heard it said that criminals are born; well, I suppose we are all born, but we were not criminals when we were born, except in the Bible sense through the fall of father Adam. We are *potential* criminals just as every man is a *potential* sick man. Some men have stronger physical constitutions than others; so some men have stronger moral characters than others. Our moral character is just as much a real entity or thing as our body, and is subject to development or neglect just as the body is. Some men with very big bodies have very small souls or moral characters.

Men can be "bred up" like stock, both as to bodies and as to their moral characters. The insurance company looks up the health and longevity of your ancestors; the bonding company inquires into their honesty.

As we all know, these rules have apparent exceptions, for the children of healthy men die, and the sons of preachers go wrong. That makes us know that there are other factors to be considered. Environment and training have much to do with the boy's development.

The Italian scientist, Cesare Lombros, contended that there is a definite criminal type. If that be true, it must be after they are fully developed. A hardened criminal may be a distinct "type;" but I do not agree with him if he considers all those who commit crimes as the criminals. Those of the French schools, on the other hand, composing quite a list of prominent criminologists, contend that the criminal is the exclusive product of environment.

We cannot agree wholly with them, but think Signor Ferri, professor of criminal anthropology in the University of Rome, has the best idea of the criminal. He says we must account for the criminal in a more complex way; that crime is the "result of three factors, which are inseparable, no matter how much in some cases one of these factors or another may predominate." The anthropologic factor, that is, the organic and psychic organization of the criminal; the telluric factor, that is the geographic environment in which the man finds himself; the social factor, the family and community conditions, and associations which influence the hereditary predispositions and daily conduct. These are the factors, then, which enter into the make-up of the criminal, or the defective individual.

Now, in considering the anthropologic factor, we should bear in mind that this defect of organism does not necessarily mean a weakness. It may mean an abnormal development of some quality or attribute of the person, such as selfishness, abnormal sexuality, or excessive temper, etc. But they are defects just the same.

Now, in considering these defective persons, we may, for convenience of study, place them in eight classes:

Class A—The ignorant, weak, and easily influenced.

Class B—The intelligent, but weak and easily influenced.

Class C—The ignorant and vicious, who prefer crime.

Class D—The intelligent, but cruel-hearted, who love revenge.

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Class F—The intelligent, very selfish scheming grafter.

Class E—The ignorant, very selfish and sneaking.

Class G—The ignorant, law-abiding normally, but influenced by whiskey, or excited by abnormally developed sexuality or passion, or influenced by some form of mania, he becomes a criminal.

Class H—The intelligent, law-abiding normally, but with the same defects as "G."

There are really but four classes. The other four differ from these only in strength and cultivation of the intellect.

Now, it would be unreasonable to say that when these men commit crimes we should treat them all alike; nor should we punish "A" and let "F" slip through the spider web of technicalities.

The crimes they commit might be the same, have the same legal definition, and the same technical procedure govern all; but there is just where our system fails. When the lawyers and the courts are quibbling over definitions, the poor, sick criminal is forgotten.

Suppose two men steal a horse together; one in class "A" is persuaded by a man in class "C" to help steal the horse. "A" has been honest heretofore, and this is his first offense. "C" has been in the penitentiary several times before, and cannot be reformed. They are indicted and tried.

The attorney for the defense does not put them on the witness stand. The jury are the doctors to decide what treatment these defective men need. The evidence is the same against both men under our rules of evidence, and of course the punishment is fixed for both alike. Each gets one year in the penitentiary.

That is not all. Both men appeal. The state's attorney happens to get all the technical proceedings against "A" correct. His case is affirmed, and he is thrown into prison and forgotten. There is a little "flaw" in the proceedings against "C," and his case is reversed; and this vicious, hardened criminal finally goes free, and seeks other weak-minded men to corrupt. A ten-year-old child would know that that is not a reasonable method of treating persons who commit crime, but all of us know that that is the way we do it under our present system.

The law should be so that the court could proceed in a simple method stripped of all technicalities, to find out all about the defects in these men and the cause of their crime. The presiding judge could then send "A" home to his wife and children under a proper parole and send "C" to the industrial farm to be confined and treated till the scientific board in charge would say it was safe to turn him out. The trial jury should simply find the defendant "guilty" or "not guilty." The law fixes the limit of the punishment; the expert board would discharge them when they are prepared for it. Our whole criminal procedure is wrong and should be made over *in toto*.

Our criminal law and procedure should be so framed and executed that it may have three principal objects or purposes with reference to the criminal or possible criminal.

*First*—Education. The criminal and possible criminal can be educated to obey the law by being constantly taught that it is better

for them to obey the law, and that punishment is absolutely sure if they violate it. This education may be done not only in the schools, but in the courts, by properly enforcing the law.

*Second*—Reformation. The criminal's malady should be studied and treated so as to *cure* him, if possible. If the case is not so serious, he may be paroled by the judge and cured without going to prison. If his is a more serious case, still over the door of his place of reformation should be written, "HOPE," instead of that usual sad fortune of the convict, "He who enters here leaves all hope behind." And if while there, he is humanely, scientifically treated, the chances are he will be saved to his family and the state.

*Third*—Segregation. If a man is vicious and dangerous, he should be kept from society, where he cannot influence other weak persons to become criminals, and should not be turned loose by pardon, or expiration of sentence fixed by a jury who, in the nature of the trial, could not understand the man's case and his needs, and who according to our technical rules of evidence could not investigate it.

Let us now consider a few cases under our procedure and see how the courts proceed.

Let us consider a Missouri case that was reversed because "the" was omitted from the concluding sentence of the indictment. The record does not disclose whether the defendant belonged in class "A" or class "F," or even whether the verdict of conviction was just or unjust; and what difference does it make if "the" is left out? The defendant has a constitutional right to have "the" in the indictment, even if it costs the state a thousand dollars to put it there, and a miscarriage of justice, too. No one but a lawyer can understand why he has, but he has. That must sound exceedingly technical, even to a lawyer. It has been said that the judge who rendered that decision worried over it so much it finally killed him. He held that because the constitution required it to be there, indictments were void without it. Our court in the Anderson case "went him one better," and said it would have to be there, even if the constitution had not said so, as it was an affirmation of an old principle in England, whence the form was borrowed.

Our court cites the Missouri court as authority in the case of *State vs. Tally*, indicted and convicted for embezzlement. The indictment alleging ownership, etc., and saying, "and being then and there the bailee of said Louis Reinman and L. Wolfert, did unlawfully and feloniously convert and embezzle to his own use said horse of the value of \$150, etc., the property of said Louis Reinman and L. Wolfert, against the peace and dignity, etc."

The opinion of our Supreme Court in the case opens with the sentence: "The indictment does not state facts constituting a public offense." If you read that indictment to anyone except a lawyer, he would say it was a serious offense, and that the offender needed treatment. The "flaw" seems to have been, that it was not alleged the property "came into his possession as bailee." The court said "the proof tended to show that," still, as it was not written

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into the indictment, what difference does it make about the evidence and the verdict of the jury? Yes, the defendant was guilty and needed treatment by the state, and everybody knew that he did get possession as bailee, and it was not denied by anybody; but the court reasoning on the matter said: "He might have been their bailee and have stolen the horse and buggy himself." Just think of it! It would have been dreadful to punish him if he stole it. Besides, there was no "might" about it; the evidence was before them.

The court further said: "Our court adopted the construction of the Supreme Court of Missouri." My honored friend, Judge Wood, handed down that law. I think he was following the court of Missouri and not his own reasoning in doing so.

Of course, Tally did not understand these definitions and precedents, but he understood that he "beat the case."

Now, let us consider a Georgia case, *State vs. Hunter*. The defendant was indicted for cattle stealing. The jury were charged that "Although the killing was accidental, if the defendants thereafter formed the intention of converting the carcass to their own use, they would be guilty." Held that the charge was error, and that the court should have instructed the jury, though there was no such request, that if the intention to steal was not formed until after the killing of the cow, the defendants would not be guilty of "cattle stealing," and reversed the conviction.

In other words, if they stole a dead cow, and not a live cow, they were not guilty, and needed no treatment by the state. The men who stole the cow did not understand how they "beat the case," but their lawyers did. Our court follows that precedent.

Let us take another Georgia case, the *State vs. Laniers*. The defendants, husband and wife, were indicted and convicted for the murder of their infant child by "choking, strangling, and by beating and striking." The court instructed the jury that "if the defendants acted in concert with each other it would make no difference which actually struck the blow, or choked or smothered the child, each would be responsible regardless of who may have struck the fatal blow." The Supreme Court, in reversing a verdict of guilty, said: "To smother is to stifle, to suffocate by stopping the exterior air passages to the lungs; to strangle is to suffocate by pressure or constriction of the throat. The jury may have believed that under the evidence the child was smothered and not strangled, and found him guilty of murder in a manner not charged in the indictment."

Poor little angel will never know what the "exterior air passages" or "constriction of the throat" means; and those brutal parents might not have known the definition of those big words, nor what that technical rule means, but they knew that their lawyer had "beat the case." Lord Raymond, in referring to such an instance of vicious technicality, said: "It was a thing no man living who is not a lawyer, could think of."

The evidence surely showed how the child was killed. If he was killed either way those defendants should have been classed with

the vicious criminals, and treated accordingly. And such silly quibbling over definitions of words, or technicalities in the law, is a crime in itself. That court did not comprehend the object of that trial, nor the purpose of the criminal law. No wonder there is a popular demand for the "recall of judges." Unless the judges adopt justice instead of precedent as their guide, I am heartily in favor of a recall of judges and judicial decisions too.

Let us see how well our laws accomplished the desired end in the Quertermous case, 95th Ark. Rept. The defendant was cashier of the bank at Humphrey, and the bank failed. The Arkansas county treasurer had the county money there, and of course it is difficult to convict for embezzlement, so the state's attorney tries to get the easiest case possible to prove. In the Quertermous case he was indicted in a long indictment setting out the facts, and alleging that "he, the said Frank Q., as cashier aforesaid, and having in his custody the books, accounts, etc., did feloniously and unlawfully alter and change with the intent to defraud the said Joseph Ireland (the treasurer) and his bondsmen, and the common school fund of Arkansas county, Arkansas, the books, accounts, etc." He was tried on this count and the jury convicted him, and said he should be confined in the penitentiary for it. The defendant appealed and urged many serious technical errors in the trial.

In the first opinion the Supreme Court stated: "Upon a *careful* consideration of the whole record in this case, we reach the conclusion that the case was *correctly tried*; that the defendant had a *fair trial*, and has been convicted upon legally *sufficient evidence*."

The defendant being a shrewd lawyer himself, was not satisfied with that, and made another effort to find some precedent or technicality that might keep him out. He succeeded; and on rehearing, the court in speaking of the indictment, not of the evidence, mind you, said: "We do not think the words, 'said felonious, fraudulent change,' as used in the indictment, take the place of, or are equivalent to, a charge that the entry was 'falsely altered.' The gist of the offense is to 'falsely alter.'"

Now, I cannot see, for my life, why to "feloniously and unlawfully alter and change with the intent to defraud," does not mean to "falsely alter," even if we are to convert a criminal trial into a technical sparring match. The chief justice thinks so, too, and he says in his dissenting opinion that any "other construction would do violence to the plain meaning of the words."

Just suppose the court is technically right, what did these words have to do with the guilt or innocence of the defendant, or his proper treatment? It was a mere technicality that at the trial neither the defendant, although a lawyer, his attorneys, the state's attorney, the trial judge, nor the jury noticed; nor did the Supreme Court notice it till after they had rendered the first opinion. When his lawyers filed the formal demurrer to the indictment, *they* thought it charged a "false change" for they demurred to the indictment charging him with *falsely altering* the books, *using the very words that the Supreme Court said was the "gist of the crime."* This law was

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handed down by my learned friend, Judge Hart, than whom there are few better men or better lawyers. Do you think that a man who would do what the jury found him guilty of in this case, has the proper respect for a procedure so technical? The fact that I have since that time had to sentence him again for a felony shows that he has not.

Why should we have technicalities at all? The big flies break through the web, while the little flies get caught. Oh, but the lawyer says, these men have constitutional rights. Well, what are they? Do you call these hair-splitting technicalities rights? But he must be deprived of his liberty only by "due process of law," according to the constitution of the United States, etc. They forget that even in the preamble of the constitution it states that the constitution is to *establish justice*, and any procedure or process that does not establish justice is not "due process of law." "But," says the technical lawyer, "we must have fixed rules of law so one will know what to depend upon." Now he has the fixed rules of law governing property rights mixed up with this technical procedure in criminal law. There is no analogy between them.

If a cashier of a bank decides to steal all the money in the bank, has he a right to know that there will be some technical flaw somewhere in the prosecution that will be overlooked by the officers, and by which he can "beat the case?" Would it not be better for the depositors, and even for the criminal, for him to know that if he steals the money he will be punished regardless of any technical flaws in the procedure?

Let us wipe out all these technicalities, and get down to justice, or rather *up* to justice. We have been studying words and phrases; we have been practicing law, and not treating these unfortunate criminals according to their needs.

The Supreme Court of Oklahoma is making the right kind of beginning. In the case of *State vs. Caplas*, the Supreme Court of that state said they proposed to give the state of Oklahoma a just and harmonious system of criminal jurisprudence, founded upon justice and supported by reason, freed from the mysticism of arbitrary technicalities. This standard will control our decisions, it matters not what or how many other appellate courts may have decided to the contrary."

"Now that our criminal jurisprudence is in its formative period, we are determined to do all in our power to place it upon the broad and sure foundation of reason and justice, so that the innocent may find it to be a refuge of defense and protection, and the guilty may be convicted and taught that it is an exceedingly serious and dangerous thing to violate the laws of this state, whether they be rich and influential, or poor and friendless." They add that they have no respect for precedents which were found in the rubbish in Noah's ark, and which have outlived their usefulness, if they ever had any. They are not waiting for constitutional amendments, but adopt the logic of the poet-statesman who said: "For forms



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of government, let fools contest; that which is best administered is best."

Judge Ben Lindsey is working wonders with juvenile offenders in Colorado. This is the secret of his success. He said: "We pay little attention to rules of evidence or technicalities; *we proceed in the interest of the boy*. If they are released on technicalities, they are encouraged to commit crime. Our laws are very flexible, and we *make them fit every case*, and above all we never release a boy till he thoroughly understands that he must obey."

He takes a would-be criminal boy who has strenuously denied his guilt to the officers and even to his parents, and by his informal and searching, though kind, manner of investigation, he finds out all about the boy and his bad habits, and the boy finally tells him all his secrets, and from that time on he is a friend and supporter of the judge and the law, and actually helps the judge lead other boys to right living.

How like reason and wisdom that seems to me!

Under our system, a lawyer might have "beat his case" for the boy, and after a few other such encouraging escapes, the boy would develop into a hardened criminal.

If a boy violates the rules at school, and the teacher undertakes to punish him for it, and then the parent defends the boy and prevents him from getting a deserved punishment; he, the parent, does for his son just what a lawyer does for a criminal when he "beats a case" on some technicality.

Men are but boys grown tall, and we shall never succeed in solving the problem of the criminal until we change our methods entirely, and adopt some rational method of investigating these defective people and the causes of their abnormal conduct, and then adopt the best method of curing them, or preventing their continuation in crime.

Our system is only a slight evolution of the ancient system litigants had of selecting their knights or representatives and letting them enter the lists and fight it out. They employ lawyers to fight it out now, and the lawyer who is shrewd enough to master our

I imagine that when we stand before the Great White Throne technical procedure, is likely to win the contest, regardless of which is right.

to receive judgment upon our deeds done while in the body, we will not be heard to plead technicalities to the indictment, nor object to the admission of evidence against us because it is prejudicial.

Sacred history records the first indictment against the first murderer on earth. Cain pleaded "not guilty" before the indictment was read. The Supreme Court of the United States would have reversed Cain's case, as they did Crain's case, because there was not a "formal arraignment." The indictment simply said: "Cain, the voice of thy brother's blood cryeth unto me from the ground."

The Supreme Court of Missouri would have quashed the indictment because "the" was not in the right place; and the Supreme Court of Arkansas would have set his conviction aside because the

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indictment was vague and indefinite and did not state whether he killed his brother Abel by beating him over the head, or punching him in the ribs.

The indictment was rather informal, but God framed it and Cain understood it.

In conclusion, let me suggest that this convention draft a resolution to present to the next legislature, asking them to create a Commission consisting of judges, lawyers, scientists, and other men of common sense and experience with criminals, to draft a criminal code based upon science and reason, and in harmony with modern demands of common sense and justice together with such constitutional changes as may be necessary to make it effective.

We should also provide a humane and scientific method of treating our defective convicts, with a view of reclaiming to society and a useful life all who can be cured by proper methods and by keeping all who are vicious and dangerous confined where they will not go at large and corrupt weak and easily-influenced persons to become criminals, and destroy the lives and property of our citizens. And this industrial farm or place of confinement should be a human laboratory, in charge of men selected because of their learning and skill in this most complicated and important work, whether they happened to be political supporters of the administration or not.

Gentlemen, I beg your pardon for making this address so long, and I offer my interest in the subject which I have so feebly presented as an excuse for this trespass upon your time.

I should be very ungrateful indeed to the many writers upon this subject if I did not acknowledge that I am indebted to the "Journal of the American Institute of Criminal Law and Criminology," more than to any other source, for my facts and ideas in preparing this address.

## JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

CHESTER G. VERNIER AND ELMER A. WILCOX

### JURISDICTION, Q. S.

*Commonwealth v. Kaiser*, 24 D. R. (Pa.) 74. *Bigamy—Power to Declare Bigamous Marriage Void as Incident of Sentence* (Act of March 27, 1903).

"The conviction of a defendant of bigamy under the Act of March 27, 1903, P. L. 102, establishes the fact of the bigamous marriage, and the Court of Quarter Sessions in imposing sentence on the defendant may, as an incident to the sentence, declare the bigamous marriage null and void.

"It is not the decree that renders the marriage a nullity. The Act of Assembly itself declares that the marriage shall be void. The only function of the decree is to render the fact of nullity judicially certain. \* \* \*

"The verdict of the jury in the present case establishes the fact of the bigamous marriage, and the Court of Quarter Sessions, in imposing sentence on the defendant, has authority to declare the bigamous marriage null and void (*Commonwealth v. Walinski*, 18 Dist. R., 504). The fact of a bigamous marriage may be established either in a proceeding in the Common Pleas under the provisions of the Act of April 14, 1859, P. L. 647, or upon an indictment in the Quarter Sessions, and in either case the court having jurisdiction may adjudge the bigamous marriage void. The Act of March 27, 1903, P. L. 102, especially declares that a bigamous marriage shall be void, and there is no valid reason why the Court of Quarter Sessions may not enter an adjudication thereof as an indictment to the sentence imposed on a defendant convicted of bigamy under the act. It is not the decree that renders the marriage a nullity. The only function of the decree is to render the fact of nullity judicially certain (*Newlin's Estate*, 231 Pa., 312)."

It is interesting to note in connection with the problem of permitting a criminal court to enter judgment in civil matters as shown by articles in almost every part of *Il Progresso del Diritto Criminale* that Judge Van Swearingen entered a civil judgment in a criminal procedure.

JOHN LISLE.

### STATUTORY RAPE

*Misconduct of Jury.* I call your attention to the case of *State of Kansas v. Charles P. Warner*, 93 Kansas, 378, decided November 14, 1914, as a good example of the way that Kansas' Supreme Court avoids undoing all the work of a trial court in a criminal case in order to correct an error less than the whole. Warner was convicted in Clay County District Court of statutory rape (as the term is commonly used for illicit sexual relations with a female person under the age of legal consent, as distinguished from forcible ravishment). Upon motion for new trial, among other points presented was the question of misconduct of the jury which was alleged to have discussed and considered why the defendant did not take the stand in his own behalf. The trial court refused to permit testimony to this end. The Supreme Court after examining all specifications of error, concluded that none appeared, but that the trial court shall have heard and considered testimony as to the alleged misconduct of the jury. It therefore directed the case remanded for reconsidera-

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tion by the trial court of the question of misconduct, but in all other respects sustained the lower court, the jury's verdict and the court's sentence. In the syllabus, which in Kansas is the law of the case, the court said: "Where a verdict of guilty is rendered without any materially erroneous ruling having been made by the court, but upon a motion for a new trial competent evidence upon a question of misconduct of the jury is erroneously rejected, it is not necessary that a new trial of the guilt or innocence of the defendant should be ordered by this court, but the cause may be remanded with directions that the proceedings shall be resumed at the point where the error was committed." In the opinion the court said: "We do not decide that any of the jurors were guilty of misconduct, but merely that the defendant has not had a full hearing upon the question whether or not such was the case. This error can be corrected by placing the matter before the District Court in the same condition as when the ruling was made, so that it may be corrected, and further proceedings taken according to the result then reached. (See *State v. Tyree*, 70 Kansas 203, 207.) The sentence will be set aside, and the cause remanded with directions for the court to investigate the question of the alleged misconduct of the jury, in the light of all available competent evidence, and pronounce judgment or grant a new trial according to the decision that shall be reached in this matter."

### TESTIMONY.

*Incompetency of Husband and Wife.* The Supreme Court of Kansas, at its December session, came out squarely, though foreshadowing a similar course heretofore, and decided that the provisions of the civil code as to the incompetency of husband or wife to testify against the other do not apply in criminal cases, and that the provision of the criminal code, Section 215, which says that no one shall be rendered incompetent to testify in a criminal case by reason of being the husband or wife of the accused, removes the only objection to the admissibility of such evidence.

JUDGE J. C. RUFFENTHAL, Russell, Kan.

### ABATEMENT OF HOUSES OF ILL-FAME.

*State v. Gilbert*, Minn., 147 N. W. 953. *Right to Jury Trial.* A statute authorized proceedings in an equity court to enjoin the maintenance of houses of ill-fame. Personal property therein was to be sold and the proceeds paid to the county treasurer except where the owner proved innocence of knowledge that it had been used in violation of the statute. The house was to be closed for one year. "A penalty of \$300" was to be imposed "as a tax upon the property and against the person" of the owner or agent which should be a lien upon the land. It was objected that these provisions were penal, so that the legislature could not dispense with trial by jury, by giving equity jurisdiction to enforce them. Held that independently of the statute equity has jurisdiction to abate nuisances, and the legislature has power to enlarge that jurisdiction. The purpose of the act is clearly "repression of the evil, to be worked out by equitable attack upon the property of those engaged in or abetting it and not punishment of the offenders by the infliction of a personal penalty," hence is a proceeding to abate a nuisance and not to punish a crime. While the act speaks of the imposition of a "penalty" of \$300, the contest clearly indicates that it is treated as a tax. Such a tax may be legally imposed as a deterrent without being technical penalty. Hence the statute is constitutional and the defendant not entitled to a jury trial.

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### BRIBERY.

*People v. Peters*, Ill., 106 N. E. 513. *Necessity of Acceptance of Bribe for Completed Offense*. Under Crim. Code Sec. 31, declaring that whoever gives any money or other bribe to any state's attorney, with intent to influence his action on any matter which may be brought before him in his official capacity, or to exercise his powers otherwise than as required by law, shall be guilty of bribery, and in view of Sec. 32, imposing a fine upon any one attempting to bribe any state's attorney as set out in the preceding section, the giving and the receiving of the bribe with corrupt intent are essential to the offense of bribery; and hence where the state's attorney took an offered bribe without corrupt intent and in order to convict the party receiving it, there was no acceptance, and hence the offender was not guilty of the offense of bribery.

### BRIEFS.

*People v. Willett*, 149 N. Y. Supp. 348. *Improper Language*. Where the district attorney's brief on appeal, in a criminal case, characterized the conduct of the justice of the Supreme Court, who granted a certificate of reasonable doubt as "intellectual inertia," "unmitigated unthinking," and "plain blundering," followed by expressions which could only be interpreted as charging judicial insincerity and duplicity, the language was contemptuous, and the brief should be stricken from the files. JENKS, P. J., Dissenting.

### BURGLARY.

*Lawson v. Com.*, Ky. App., 169 S. W. 587. *Breaking Out*. The defendant was indicted and convicted under a statute providing for punishment "If any person \* \* \* shall feloniously break any dwelling house and feloniously take away anything of value \* \* \*." Another section provided that statutes in derogation of the common law should be liberally construed with a view to promote their operation. The evidence indicated that the defendant entered a dwelling house through a window, stole flour and lard, unfastened the rear door of the house and carried the stolen goods out through that door, re-entered the house, fastened the rear door and left the house through the open window. The defendant appealed on the ground that the court erred in refusing to direct and acquittal because the proof failed to show the accused had broken into the house. Held that the opening of the rear door was a breaking. The statute did not require that the breaking precede the theft. The defendant had stolen the goods and broken out of the house. Hence the court did not err in refusing to direct an acquittal.

### CONSTITUTIONAL LAW.

*Commonwealth v. Karvonen*, Mass. 106 N. E. 556. *Validity of Statute Forbidding Use of Red Flags in Parades*. As a "red flag" is well recognized as a revolutionary and terroristic emblem, Stat. 1913, c. 678, sec. 2, prohibiting the carrying of red or black flags in parade, is not bad as unlawfully depriving persons of their liberty: the purpose of the enactment being to prevent parades which would provoke turbulence, which is a legitimate regulation of personal liberty.

### CRIMINAL PROCESS AGAINST CORPORATION.

*State v. Taylor*, S. Dak., 147 N. W. 72. *Summons*. A code of criminal procedure provided for the issuance of summonses to bring a corporation before a magistrate for preliminary hearing upon a criminal charge, but contained no

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provision for process against a corporation upon an indictment or information. It provided that in matters not covered by the code the practice should be in accordance with the common law. The penal code applied to corporations as well as to natural persons. A corporation was indicted, and a writ of summons issued. On the return day it appeared specially and objected to further proceedings on the ground that the statute did not authorize the issuance of a summons upon the indictment and hence the court had no jurisdiction over the defendant. Held that the maxim "*expressio unius, exclusio alterius*" does not apply as the legislature has wholly failed to provide a method of bringing a corporation into court for trial upon an indictment or information. The common law process by *distringas* being obsolete, service of summons was valid to require the corporation to answer the indictment and the court thereby acquired jurisdiction of the defendant. *People v Equitable Gas Light Company*, 5 N. Y. Supp., which held the other way, was overruled.

### DRUNKENNESS.

*United States v LeClair*. Criminal Cause 100, United States Court for China. Nov. 2, 1914. *Effect of Voluntary Use of Cocaine*. By the prevailing rule mental aberration, produced by the voluntary use of cocaine is treated as affecting criminal responsibility in the same way as that resulting from the similar use of intoxicating liquors, i. e., the crime committed under such circumstances is not excused, but it is classified as of lower degree and the punishment is reduced accordingly.

### ERROR WITHOUT PREJUDICE.

*Raoul v City of Atlanta*, Ga. App., 82 S. E. 763. *Guilt Admitted*. Defendant was convicted in the recorder's court of selling liquor illegally. He applied to the Superior Court for a writ of certiorari, which was refused, and he brought error. At the trial he admitted that he was secretary and treasurer of the Owls' Club, that the club sold liquor illegally, and that he received as compensation for his services to the club ten per cent of all its receipts, including those from such sales. He denied that he bought the liquor kept at the club or that he ever made any sales. Held that on his own statement he was an accessory to the violation of the ordinance, so the certiorari should not have been issued even though illegal evidence was admitted against him at the trial and other errors committed by the recorder. "If the only possible legal result has been reached, the judgment of the trial judge will not be reversed for the purpose of allowing the case to be heard again, that the same result may be brought about more technically."

### EVIDENCE.

*State v Lasecki*, Ohio, 106 N. E. 660. *Res Gestae*. The exclamation of a boy, four years of age that "the bums killed pa with a broomstick," which was made from 10 to 30 seconds after a fatal assault upon his father, made in the boy's presence, is competent evidence to go to the jury as explanatory and illustrative of the manner and means by which the father was assaulted. The utterance of the boy under such circumstances, made at the earliest opportunity to make an outcry in the presence and hearing of others, was the spontaneous and impulsive language of the situation, free from any subterfuge, artifice or motive to fabricate. Its weight, however, is purely a question for the jury.

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*People v. Walter*, 149 N. Y. Supp. 365. *Effect of Stipulation by Joint Defendants.* Where defendant and C. were jointly tried with their consent for an offense against the franchise, and at the beginning of the trial it was stipulated that all testimony offered in behalf of either defendant and received without objection should inure to the benefit of both, the converse was equally true, and hence, where a witness gave certain testimony that created an inference favorable to C., proof in rebuttal that such testimony was false, and showing that the fact tended to an incriminatory inference, was admissible against accused as well. Jenks, P. J., and Carr, J., dissenting.

### FALSE PRETENSES.

*State v. Foxton*, Ia., 147 N. W. 347. *Drawing Check Without Funds.* The defendant was convicted of cheating by false pretense. He asked a friend to identify him at a bank where the friend lived so that it would cash a check on his home bank. The friend introduced him to the assistant cashier, who asked if the friend would endorse the check. Defendant then drew a check upon his home bank, payable to the friend's order. The friend endorsed it and the bank, at which they then were, paid the defendant the cash in the friend's presence. The defendant did not say whether he had money in the bank on which the check was drawn or whether the check would be paid on presentation. The check was dishonored and the friend was forced to repay the amount to the bank. The defendant never had any money in his home bank on which he had a right to draw checks and had no reason to believe that the check would be paid by that bank. After defendant was arrested he repaid the amount of the check to the friend. Held that the mere making and delivery of the check, to induce the payment of the money, is an assertion and pretense that the drawer has, at the time, money or credit at the bank on which the check is drawn and that the check will be paid upon presentation. Hence the defendant obtained the money from his friend by a false pretense.

### FORFEITURE OF PROPERTY USED ILLEGALLY.

*State v. Gilbert*, Minn., 147 N. W. 953. *Due Process of Law.* A statute giving courts of equity jurisdiction to abate houses of ill-fame, directs the removal of all movable personal property and the sale of such as belongs to defendants notified or appearing in the suit, unless the owners appear and claim the same within ten days after the order of abatement is made and prove to the satisfaction of the court their innocence of knowledge of said use and of their inability to have acquired such knowledge by reasonable care and diligence; every defendant being presumed to have known the general reports of the place. If their innocence is thus established, the property shall be delivered to them, but otherwise sold. Held that as the statute prescribes notice to everyone and makes provision for a full hearing before final judgment upon the matters involved, it does not authorize property to be taken without due process of law. The provisions making lack of reasonable care or diligence equivalent to notice of the use to which the property is being put is valid, for ignorance due to neglect is the equivalent of notice. Hence the provision is constitutional.

### FORMER JEOPARDY.

*People ex rel. Bullock v. Warden of City Prison*, 150 N. Y. Supp. 24. *Use of Writ of Habeas Corpus in Place of Plea of Former Jeopardy.* Where

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relator was indicted for manslaughter, and the jury disagreed, the Supreme Court will not, where the prosecution for manslaughter was dismissed and relator reindicted for murder in the first degree, liberate him on *habeas corpus*, even though his first trial constituted former jeopardy, and a conviction for murder in the first degree could not be upheld, for it must be presumed that the County Court, which has jurisdiction of the proceedings, will grant relator proper relief. Relator's first trial constituted former jeopardy, within the Federal and State Constitutions, prohibiting the putting of a person in jeopardy twice for the same offense; for the state having proceeded to trial and required the defendant to make his defense against a charge of one degree of homicide, cannot thereafter dismiss that prosecution and indict for a higher degree, even though, under Code Cr. Proc., Sec. 400, authorizing the trial judge to dismiss the charge and order a resubmission of the case to the grand jury, where the testimony shows a higher offense than that charged, it might have secured a dismissal and reindictment before accused had made his defense.

### HIGHWAYS.

*Southern Ry. Co. v. State*, Tenn., 169 S. W. 1173. *Obstruction Caused by Change of Grade*. In 1887 a railroad trestle was lawfully built over a public highway. It did not obstruct travel. The town in which it was located was incorporated in 1903, and some time thereafter it raised the grade of the road under the trestle about two or two and one-half feet. In consequence, loads of hay, fodder, and vehicles similarly loaded could not pass under the trestle. Defendant then owned the trestle. The town did not order defendant to raise it. Defendant was indicted and convicted of obstructing a public road. The court said that the town had power to change the grade of the street, and could have required the railroad company to reconstruct its crossing to conform to the change, but held that as no such order had been made the railroad company was not criminally liable because of the obstruction. When one's property is, by the act of other parties over whom he has no control, made the instrumentality of a nuisance, the act of those parties is the proximate cause, and the innocent owner of the property is not responsible. It would seem to follow from the argument that the town and its officers might be criminally liable for failure to have the obstruction removed.

### INDETERMINATE SENTENCE.

*Coleman v. Com.*, Ky. App., 169 S. W. 595. *Change of Law*. The indeterminate sentence law of 1910 provided that upon conviction of felony the court should sentence the defendant, fixing as the minimum and maximum limits of the term the corresponding limits provided by the statutes. In 1914 this law was changed, the new act providing that the jury should render a verdict fixing an indefinite term, the minimum of which should not be less and the maximum not greater than the minimum and maximum punishment prescribed by the statute. After the second act took effect, the defendant was tried and convicted for a crime committed in 1913, and was sentenced by the court in accordance with the act of 1910. The defendant appealed on the ground that the length of the term of imprisonment should have been fixed by the jury as provided by the act of 1914, under a statute providing that if any punishment be mitigated by a provision of a new law, such a provision may by the consent of the party affected be applied to any judgment pronounced after the new law takes effect. Held that, under the act of 1910,



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the prisoner would have the right of applying for a discharge when he had served the minimum term prescribed by the statute. Under the act of 1914, the jury could fix no shorter term, while it could fix a longer minimum. Thus the act of 1914 did not certainly mitigate the punishment. Furthermore, the act of 1914 did not apply unless the defendant consented on the record to have the punishment fixed under it, and he had not done so. Hence the trial court was correct in imposing sentence under the act of 1910. The conviction was affirmed.

*Woods v. State, Tenn., 169 S. W. 558. Constitutionality.* Under the statutes of Tennessee prior to the enactment of the Indeterminate Sentence Law, the jury, when they convicted, fixed the length of the term of imprisonment. Under the new law the judge imposed sentence that the term be not less than the minimum nor more than the maximum terms provided by the statute under which the conviction was had. The defendant was convicted of a crime committed after the new law took effect, but the verdict of the jury fixed his term of imprisonment at five years. The judge disregarded the term prescribed by the jury and sentenced the defendant to not less than three nor more than ten years in the penitentiary, pursuant to the statutes. The defendant appealed on the ground that the new law was unconstitutional. Held (1) that the act does not impair the right of trial by jury, as the right to have the jury assess the punishment was not a part of the right of trial by jury at common law. (2) It does not deprive defendant of liberty without due process of law, as the law is general, applying to a definite and reasonable class of cases, and it deprives no man of his liberty unless he has been duly found guilty by the verdict of a jury. (3) It does not confer judicial powers upon administrative officers, in violation of the constitutional provision keeping the legislative, judicial and executive departments distinct. The power conferred upon the board of prison commissioners to grant a parole after the expiration of the minimum term fixed by law is discretionary, but the exercise of discretion is not restricted to judicial officers; many administrative officers exercise discretion. There is no litigation between parties to be decided by the commissioners; their decision deprives no one of any legal right, nor does it transfer any property or right from one person to another. Further, their discretion is not unlimited, but the legislature doubtless intended that it should be controlled by the same principles as were laid down in the act as conditions for final discharge. The parole leaves the prisoner in the custody of the board, and subject to reimprisonment on its order. (4) It does not delegate legislative authority. The statute under which the conviction is had fixes the maximum term of imprisonment, subject to diminution at the discretion of the board, after the minimum term prescribed by that statute shall have been served. This is no more a legislative act than was the verdict of the jury which, under the prior statute, fixed the length of the term. It is much like the discretion given to prison officials under good-time statutes to decide whether the prisoner's conduct has entitled him to the full reduction of time for good conduct. It is now generally agreed that reformation is the object of imprisonment. This can be accomplished only by restraint, observation, guidance, and protection from imposition. Neither the courts, the legislature nor the governor could exercise the necessary authority. The powers are neither judicial, legislative, nor executive in the sense in which those terms

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are used in constitutional limitations, but they "belong to that great residuum of governmental authority, the police power, to be made effective, as is often the case, through administrative agencies." (5) It does not trench upon the governor's pardoning power. When the board is satisfied that a paroled prisoner has become law-abiding, it may recommend his discharge to the governor, who may then discharge him. This is not a pardon, as the rights of citizenship are not thereby restored. Hence the judgment of the trial court was affirmed.

### INDICTMENT AND INFORMATION.

*Lee v. State*, Ark., 169 S. W. 963. *Variance in Unnecessary Description*. The defendant was convicted under an indictment which charged that she enticed a female under the age of sixteen years to become an inmate of a house of prostitution, "Said home then and there being situated on Lake Street, in the city of Paragould, Green County, Arkansas." The proof was that the house was not on Lake Street, but upon a short street in that vicinity. Held that the offense was of a local character. The indictment would have been sufficient had it charged only that the house was in Paragould. But since the pleader alleged the location upon a particular street, that allegation became descriptive of the offense, and material, and should have been proved as charged. Hence the variance was fatal, the judgment was reversed, and the case remanded for a new trial.

*Timmons v. State*, Ga. App., 82 S. E. 378. *Variance*. An indictment for stealing a cow stated the color of the cow. At the trial the witnesses disagreed as to her color, but there was some evidence that substantially conformed to the description in the indictment. The defendant was convicted. Held that as the jury could believe the witnesses whose testimony agreed with the description in the indictment, and disbelieve the others, there was no fatal variance between the allegation and the proof. The conviction was affirmed.

*Rutherford v. State*, Tex. Cr. App., 169 S. W. 1157. *Clerical Error*. Defendant was convicted of pursuing the occupation of itinerant physician without having paid the statutory tax. The indictment as found by the grand jury charged that defendant pursued the occupation of "physicial." Defendant moved to quash, on the ground that no such occupation as "physicial" was taxed. The trial court ordered the clerk to change the "i" to "n," and denied the motion to quash. Held error. The word was a matter of substance in the offense charged and not a mere matter of form. An indictment cannot be amended in matter of substance. "Had the trial court not undertaken to change the wording of the indictment, the whole context might have been sufficient, notwithstanding this mistake in spelling the word "physician," but we cannot countenance the alteration of indictments in matters of substance after they have been returned into court." The judgment was reversed and the prosecution ordered dismissed.

*State v. Foxton*, Ia., 147 N. W. 347. *Amendment*. A statute provided that the county attorney might before or during the trial amend the indictment to correct errors as to matters of form, or in the name of any person, or the description of any person or thing, or in the allegation concerning the ownership of property; but such amendment should not prejudice the substantial rights of the defendant or charge him with a different crime or a

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different degree of crime than that already charged. The indictment charged that by a specified false pretense the defendant induced one Dickinson "by said false and fraudulent practices and representations to part with and pay to the defendant \$50.00, and accept from the defendant his check therefor." During the trial the court permitted the county attorney to amend the indictment by changing the final period to a comma and adding "by endorsing defendant's check and procuring money thereon from the State Bank of Waverly, Iowa, which was thereupon paid to the defendant." Held the amendment simply stated the manner in which the money was paid to the defendant, as charged in the original indictment. It did not change the nature or degree of the crime nor prejudice the substantial rights of the defendant. Hence it was not error to permit the amendment to be made.

INSANITY.

*Commonwealth v. Cooper*, Mass., 106 N. E. 545. *Improper Instruction.* In a prosecution for murder, a charge that if defendant had a mental disorder called "constitutional inferiority," and that if the jury find that such disorder carried with it a limited—that is, diminished—degree of responsibility for the act, he could not be found guilty of murder in the first degree, was properly refused, since the defendant, even if abnormally deficient in will power and of retarded mental development, might still be found to have been fully conscious of the criminal character and consequences of his act.

LARCENY.

*Morton v. Commonwealth*, Ky. App., 166 S. W. 974. *By Trustee.* The defendant was convicted of grand larceny on an indictment charging that he had "\* \* \* taken, stolen, and carried away from the possession of Elizabeth Shelton \$525.00 of good and lawful money \* \* \* and one land note of \$675.00, \* \* \* the personal property of said Elizabeth Shelton \* \* \* with the felonious intent to convert the same to his own use and to permanently deprive the owner, Elizabeth Shelton, of the same." The proof was that the defendant came from Tennessee and soon became engaged to Miss Shelton. He insisted that she sell her farm in Kentucky, as they would return to live on a farm he claimed to own in Tennessee, and said if she would convey the land to him he could get \$200.00 more than she could sell it for and he would at once turn over the proceeds to her. Relying on this advice, she conveyed the farm to him, without consideration, though the deed recited a pretended consideration of \$1,100.00. The next day he sold and conveyed the farm for \$1,200.00, receiving \$525.00 in cash and a note payable to himself for \$675.00. He kept both the cash and the note, and tried to sell the latter. He appealed from the conviction on the ground that this evidence did not show grand larceny, but obtaining money and property by false pretenses. Held that the evidence showed that the defendant obtained the deed with the felonious intent to steal and convert the proceeds of the land to his own use. "The several transactions by which this object was accomplished were but part of the trick or device by which she was deprived of the consideration received by appellant from the sale of the land and its conversion effected by him." Relying upon the fraudulent representations, Miss Shelton constituted defendant "her agent to sell the land and immediately pay over to her the proceeds." When he received and converted the proceeds he committed grand larceny. "\* \* \* This arrangement having been brought about by his fraudu-

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lent procurement and with the felonious intent on his part to steal, carry away and convert to his own use the money and note received by him from the land, he should not be allowed to escape the punishment that will result to him from the verdict of the jury and the judgment of the trial court, upon the false and purely technical ground that he is guilty of a felony other than the one for which he was indicted and convicted. It is evident that under the conveyance the defendant held the land as trustee for Miss Shelton, and when he sold and conveyed the land, as he was authorized to do, the proceeds were a trust fund in his hands for her benefit. She never had legal title to, nor possession of, the proceeds. If there is a statute in Kentucky which makes a trustee, who embezzles the trust fund, guilty of grand larceny, the decision is evidently correct. The case does not indicate that there is any such statute. The court evidently treats it as a case of larceny by trick at common law. But it is novel doctrine at common law that property can be stolen from a person who neither owns nor possesses it. The court was doubtless confused by the contention of the defense that the money and note were obtained by false pretenses, which was equally unsound, as no false pretenses were made to the person from whom the money and note were obtained. The last extract quoted from the opinion of the court seems to go beyond the farthest demands of those advocating the reform of our criminal procedure by eliminating technicalities. The conclusion seems to be that since the defendant has been convicted of one crime, and as the evidence shows he committed some crime, the conviction should be affirmed. No one could reasonably ask greater freedom from technicalities than this.

*State v. Beard*, S. Dak., 147 N. W. 69. *Proof of the Corpus Delicti*. The defendant was convicted of stealing a horse. The evidence showed that the horse had been in the owner's possession in October, 1912, had not been sold to the defendant nor to anyone else, that no one had been given authority to take and dispose of it, and that it was found in the possession of this defendant in March, 1913. There was no evidence as to the whereabouts of the horse between those dates or as to how it came into the defendant's possession. Held that the evidence did not show a felonious taking by anyone, so that the presumption of guilt arising from the recent possession of stolen property did not arise. Because the *corpus delicto* was not proven, the conviction was reversed.

### OBSTRUCTING JUSTICE.

*Commonwealth v. Southern Express Co.*, Ky. App., 169 S. W. 517. *Removing Written Evidence from the Jurisdiction*. An indictment charged that the grand jury being about to investigate violations of the prohibitory law, the defendant, knowing that certain of its books and papers contained evidence of the violation of the law by itself and others, and knowing that such books and papers would be called for and required by the grand jury, caused them to be removed from the county, for the purpose of hindering, obstructing, and preventing such investigation; and thereby obstructing justice. The trial court sustained a demurrer to the indictment and discharged the defendant. The commonwealth appealed. The Appellate Court said that a natural person could not be required to exhibit to the grand jury the contents of his books and papers containing evidence incriminating himself, any more than he could be required to incriminate himself by word of mouth, but when sub-

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poenaed to produce them he must appear in person before the court with the required evidence in his possession and must tender himself and his books and papers for investigation by the court, so that it may determine for itself whether the evidence desired is of an incriminating nature. But it held that the constitutional provision against self-incrimination does not extend to corporations and may not be claimed for it by its officers or agents. The defendant could have been compelled to produce its books and papers by the subpoena *duces tecum ad testificandum*, directed to the agent of the corporation, for possession of the records, or by a subpoena *duces tecum* without the *testificandum* clause directed to the corporation itself and served upon its personal agent. It was immaterial that, when the records were removed, no subpoena had been issued requiring the company to produce them before the grand jury. Records cannot be removed with impunity in anticipation of a subpoena any more than a possible witness can be bribed or intimidated from attending the trial before a subpoena has been served upon him. Hence the removal of the records constituted an obstruction of justice and the judgment of the lower court was reversed.

### PARTIES.

*United States v. LeClair*, Criminal Cause No. 100, U. S. Court for China, Nov. 2, 1914. *Principals in the Second Degree under the New Federal Penal Code*. The common law classification of principals into those of the first and second degrees has not been abolished by the Federal Penal Code, and where defendant was not the actual perpetrator of the abstraction which constitutes the gist of a robbery he must be treated as a principal in the second degree.

*People v. Bruno*, 149 N. Y. Supp. 321. *Accomplice*. Penal Law Sec. 2354, subd. 1, providing that a person who counterfeits a trade-mark shall be guilty of a misdemeanor, implies that the act shall be done with a fraudulent or criminal intent, and a printer, by printing impressions from plates brought to him by his customer in the ordinary course of business, and delivering the impressions to his customer, could not be regarded as an accomplice, within the law relating to the evidence of accomplices.

*People v. Kimmel et al.*, 150 N. Y. Supp. 311. *Liability of Partnership for Unauthorized Act of Agent in Selling Adulterated Drugs*. Under Public Health Law, Sec. 234, as amended by Laws 1910, Ch. 422, making every proprietor of a pharmacy or drug store responsible for the strength, quality and purity of all drugs sold or disposed by him; Sec. 235, as so amended, making a proprietor liable for violations of that section by his apprentices or unlicensed employees; Sec. 240, subd. 10 and 11, as so amended, making it a misdemeanor for any person to adulterate any drug, knowing or intending that it shall be used, or to sell any adulterated drug, or for any person to violate any provision of that article for which no punishment is imposed; and the further provision of Sec. 240, as amended, that any person violating any provision of that article who is not criminally prosecuted shall forfeit to the people \$50.00, that the word "person" in that article shall import both the plural and singular, and include corporations and partnerships, etc., that the act, omission or failure of any officer, agent or person acting within the scope of his authority or employment shall be deemed the act, omission or failure of the corporation or association, and that in case of a violation by a

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partnership, association or corporation, every member of the partnership, or association, and the directors and general officers of the corporation and the general manager of each shall be individually liable—the members of a partnership were individually liable for the penalty for the act of their clerk, a registered pharmacist, in wrongfully compounding and delivering an adulterated drug, although they had directed him to obey the law, and although partnerships are not mentioned in the provision relative to the liability of corporations and associations for the acts of their officers and agents, as the purpose of the amendment of 1910 to Section 240 was not to limit the scope of the act but to make it more definite and certain as to corporations and associations. Seabury, J., dissenting.

### PLEA.

*Canter v. State*, Ohio, 106 N. E. 656. *Rejection of Plea of Guilty of Lesser Offense and Admissibility in Evidence.* The tender of a plea of guilty of assault and battery by the accused, upon arraignment under an indictment charging shooting with intent to kill, which tender is rejected by the state, is not a proper subject of record on the journal of the court. Nor is the entry of such a plea, and its rejection by the state, admissible in evidence upon the trial of the accused under the indictment. Wanamaker, J., dissenting.

### SENTENCE.

*People v. Goodrich*, 149 N. Y. Supp. 406. *Power to Suspend Execution.* The Supreme Court, after passing sentence of imprisonment at trial term, has the inherent power at common law to suspend sentence during defendant's good behavior, and to revoke such suspension at a later term and direct that it be executed, and has the same power under Penal Law, Sec. 2188, providing that courts in their discretion may suspend sentence during good behavior in certain cases, in view of Code Cr. Proc., Sec. 487, as amended by Laws 1901, Ch. 372, providing that in certain cases, where the court has suspended sentence or the execution thereof, the defendant shall be placed in the hands of a probation officer and of Code Cr. Proc., Sec. 483, as amended by laws 1905, Ch. 656, providing that after a plea or verdict of guilty the court, on suspending sentence, may place defendant on probation or suspend sentence of imprisonment, and, as further amended, to allow the court to revoke such provision and pronounce judgment or revoke such suspension of judgment. The suspension of sentence gives the prisoner no vested rights, nor does it in any way conflict with the pardoning power of the executive.

*Thompson v. Duehay*, Supt. of Prisons of Department of Justice, 217 Fed. 484. *Effect of Commutation on Good Time Allowance.* Under Act of June 25, 1910, Ch. 387, Sec. 1, providing that every prisoner convicted of any offense against the United States and confined in any United States penitentiary or prison for a definite term or terms of over one year, whose record of conduct shows he has observed the rules of the institution, and who has served one-third of the total of the term or terms for which he was sentenced, may be released on parole, and Sec. 10, providing that nothing therein contained shall impair the power of the President to grant a pardon or commutation, or impair or revoke any good time allowance, where sentences to two four-years' imprisonment on each of two counts, to run consecutively, were commuted by the President to run concurrently, the prisoner was eligible to parole

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when he had served one-third of the four-year period covered by the concurrent sentences, since the "total of the term or terms" means the total time actually to be served, and the commutation in effect wipes out the judgment and writes a new sentence, and, moreover, any other construction would deny full effect to the action of the President.

### VERDICT.

*Gordon v. State*, Wis., 147 N. W. 998. *Error in Record.* On a trial for felony the jury found a verdict of "guilty" and the foreman orally reported it to the court. By a mistake he had signed the blank verdict of "not guilty." The court discovered this and directed the jury to retire. On returning into court they again gave their verdict as "guilty." By mistake the clerk recorded in the minutes the written verdict of "not guilty." Held that the verdict returned by the jury was the legal verdict, the erroneous entry in the clerk's minutes was without effect, and the conviction was affirmed.

*Lamb v. State*, Tex. Cr. App., 169 S. W. 1158. *Term Fixed by Average.* A verdict that defendant was guilty of murder fixed his term of imprisonment at thirty years. On motion to set aside the verdict, on the ground that it was a "quotient verdict," the jurors were examined. Their testimony showed that they had agreed upon a conviction and that the ballots cast to fix the term ranged from five to ninety-nine years. After several ballots it was agreed that the terms favored by each should be added and the total divided by twelve. This was done, and the quotient was thirty-two years and six months. A juror then moved that the term be thirty years, and the motion was unanimously carried. One juror testified that it was agreed before the average was taken that they should all be bound by the result, and that it was only because of this agreement that he consented to so long a term. Another said in one part of his testimony that they agreed to be bound by the result, but in another part said he was free to disagree after the average had been found. The rest of the jurors denied any agreement to be bound by the quotient, but said it was taken to ascertain the average opinion of the jury and agreed to by all after the quotient had been obtained. Held that this evidence required the trial judge to find that there was no prior agreement to be bound by the quotient, and that a verdict so found without such prior agreement was valid. The conviction was affirmed.

NOTES ON CURRENT AND RECENT EVENTS.  
**ANTHROPOLOGY—PSYCHOLOGY—LEGAL-MEDICINE.**

**The Field of the Prison Physician.**—The professional activities of the prison physician who lives up to his opportunities are widely diversified and are everywhere replete with human interest. Besides being practiced in general and internal medicine and a skilled general operating surgeon, the prison physician acts as institution health officer, as sanitarian and dietitian. He practices preventive medicine daily and is the recognized authority on body hygiene and physical exercise for his clientele. In his operating room he treats daily the cases of the aurist, rhinologist, laryngologist and ophthalmologist, and is no stranger to the work of the dentist and chiropodist. In his laboratory he is the pathologist, bacteriologist, microscopist and serologist, there checking up his operating room findings as syphilographer and genito-urinary specialist, and he has, of course, expert knowledge of the technic of the Wasserman reaction and the administration of Salvarsan.

When improvements in operating room and laboratory equipment and up-to-date hospital supplies and apparatus are needed the institution physician is the first to recognize these needs and arrange for their supply. Or, if the hospital staff should need additional general or special medical, surgical or nursing skill the physician takes the initiative in securing or training such. So, he is an interested and active hospital organizer and administrator, and when new hospital room is needed he is the medical consultant on hospital construction.

With this mere mention of some of the forms of professional activity to the material and physical needs of prisoners, let us consider that part of the physician's field which extends to the prisoner's mental life, the psychic welfare of the patient. The most important and exalted usefulness of the prison physician lies in the exercise of those of his professional functions which relate to the mentality of his patients. The physician's first duty to prisoners in point of sequence is to secure physical health and comfort; but the insuring of that desideratum is only preparatory and secondary in importance to mental welfare endeavor. Now that medical science and enlightened administrative effectiveness have combined to render the prisoner's physical and material environment one of health and comfort, the time is ripe for the development of the clinical psychological examination of prisoners, for the prosecution of laboratory research work drawn from full, accurate, permanent and systematic case records made at individual interviews and examinations. Most valuable contributions to our criminological and psychiatric knowledge cannot fail to result from the studies of prison physicians, scientifically conducted with individual prisoners. Legitimate conclusions and recommendations based on a sufficiently large collection of reliable, permanent clinical data are of pre-eminent scientific and practical importance.

The individual interview and psychic examination provide an excellent opportunity for real uplift work,—for teaching the individual prisoner the supremacy of mind over matter. The prisoner who leaves a penal institution with a well-formed plan written out by himself of how he will spend his spare time evenings and holidays for a period of years in acquiring special skill in some definite occupation is fortified for his coming struggle with temptation to a far greater degree than if he had only the usual vague idea that he would this time "make good." The prisoner who understands from his prison physician that there are three steps to be taken, consciously or unconsciously, by every man who reforms, viz., (1) to wish to do well, (2) to make a plan by which he may do well, and (3) to determine to live by his plan for five years, more or less, is better prepared to succeed than if these steps had not been taught him. If the prisoner has been convinced that nearly all his fellow prisoners wish to do better, but that only those among them realize their wish who make a good plan and then work it out with a man's determination, he may be suffi-



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ciently inspired to realize his wish for success. If a prisoner has been taught that reformation can hardly take place in a reformatory because of shelter from temptation, but that the reformatory is a very good place in which to *prepare* for reformation by making plans therefor, like the general in his tent on the eve of battle, the newness of the viewpoint or the personal interest manifest by the physician, or the inspiration of his personality, may rouse a real ambition and resolution in the prisoner's mind which shall be sufficient, where there is no vital, inherent defect to determine the making of a self-made man.

Some prisoners need to have the difficulties of reformation pointed out to them. Others need to use more wit and judgment in planning. Still others, not defectives, lack practice and ability in clarity of thinking, self-application, the use of will-power or self-control or in other mental functions, and none but the prison physician can know so well of these handicaps of individual prisoners, and none but he is in so good a position to advise the prisoner and his friends, since he alone has commanding knowledge, after a study of his subject, of the essential elements in the prisoner's problem of mental rehabilitation.

The prison hospital staff which does not furnish a psychiatrist's skill, either in the person of the prison physician or otherwise, can hardly take pride in its completeness. An alienist's skill is obviously needed in every prison where there are malingerers to be detected, cases of insanity to be recognized, or any attempt made to classify inmates on the basis of mental capacity and efficiency. The prison physician who is himself an alienist has an essential armamentarium of resourceful experience with which to test the capabilities, detect the psychopathic departures, and influence the opinions of his subjects.

A directly philanthropic and educative influence may be exerted on the minds and lives of his patients by the prison physician who writes or prepares for circulation among them, either as loan or gift, copies of one or more brochures on such subjects as body hygiene, mental hygiene, sex hygiene and venereal diseases. No class in the community, perhaps, is in more need of correct teaching and illuminating information on matters of sex-hygiene than our prisoners, both from the viewpoint of social welfare and benefit to the prisoner himself. The depths of ignorance and diversity of misconception regarding sex matters found current among prisoners is startling. They and the social class to which most of them belong are, perhaps, the most efficient agencies in operation for spreading specific diseases. And clearly the prison physician is the only source of information available for this class.

There is a sharp contrast between the attitude of the family physician toward the mentality and morality of his patient who is not a prisoner and the attitude of the prison physician toward the mental activities of his prisoner patient. The general practitioner has seldom to "heal a mind diseased." The prison physician, on the other hand, finds his highest usefulness in the exercise of his functions of alienist and psychologist. It is the cure of an abnormal or malfunctioning mind that is needed for the prisoner, and in the matter and manner of his psychopathic and psychotherapeutic treatment lies the basis for one of the highest hopes of restoration. It is indeed a worthy work to remove the physical obstacles to reformation by the skillful practice of medicine and surgery; but at best that procedure is indirect and contributory. The activities of the prison physician are by no means limited to the exercise of these functions. It is essentially within his province to influence directly the mental processes of his patients; to exert the potent influence of mind upon mind; to deal with ethical values, with motives, emotions, impulses, suspicions, eroticisms, overvalued ideas, erroneous conceptions, with weaknesses of will and with wills misdirected and untrained. He may not work miracles with cases of retarded mental development, but he may recognize and classify such, and in more promising cases may teach that reason is a better guide than impulse; may explain away some prejudiced conception or damaging sophistry, or otherwise dispel a mental shadow that has darkened a life. Psychotherapy is surely an essential part of the physician's province, and no class in the community is so sadly in need of psychoanalytic and psychotherapeutic treatment as our prison population; furthermore, no class will react more responsively to such treatment when it is well adapted.

In the domain of research some very pertinent questions await a medical

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answer; such questions as relate to the degree of responsibility of individual prisoners and classes of prisoners; questions requiring an expert's opinion for day-to-day use by the administration and disciplinarian; as well as questions of academic importance contributory to the general mooted problems of the moral and legal responsibility of various degrees of mental defectiveness. Many other problems clamor for scientific medical study: problems relating to methods of education of normal prisoners and of abnormal prisoners; questions relating to methods of controlling the increase of constitutional defectiveness in coming generations; questions relating to the influence on criminality of transmissible traits and diseases. These and other questions, such as those relating to the causes of criminality, intimately concern the clientele of the prison physician and the public as well. Such problems can be solved only by scientifically trained students having sociological, psychological and medical knowledge and skill. The prison physician is logically the man to undertake these studies and to answer these questions. A wealth of clinical material awaits him in our reformatories and prisons where classification on a scientific basis is urgently needed, and where individual psychological work counts in tangible benefits to the individual, to the state and society as in no other department of medical activity. The psychic handicaps of prisoners are largely remediable theoretically, and it is a fact that many a young prisoner needs only to be taught in a receptive moment how to make plans for a creditable future, and how he may train his will to execute those plans, to bring within his reach a happy and successful life. The prison physician's opportunity to act in the capacity of clinical criminologist in this almost untouched field of scientific and practical endeavor is patent. Almost every writer on eugenics, euthenics or delinquency in any of their branches deplores the lack of accurate statistics, reliable information, real constructive research work in these fields.

Some prison physicians have foreseen this transition period in which we now are and have pointed out before this association and elsewhere some of the very problems for which we now earnestly seek men and methods for a solution. The gratitude and hearty support of thoughtful people, and the unthinking as well, are due those well-trained and skillful pioneer investigators, whether trained in medicine or not, who are already attacking these problems and teaching us how to study and how to treat our prisoners scientifically. The need for specially trained investigators is great, and the rewards of every conscientious student whose privilege it is to conduct or be connected with a criminological clinic cannot fail to be commensurate with the greatness of the opportunity and the importance of this virgin field.

Psychiatry has emerged in a generation and attained the dignity of a well-systematized and recognized medical specialty, and now that investigators are aroused and active, and pioneer criminological laboratories are already being organized in the prisons and courts of some of our great cities, it is not too much to expect that the development of criminology as a specialty and science will progress rapidly. The prison physician with laboratory facilities his for the asking, and clinical material going to waste for want of study, has his opportunity before him. Thomas Carlisle has said: "Blessed is he who has found his work. Let him ask no other blessedness."

GUY G. FERNALD,  
Resident Physician, Massachusetts Reformatory, Concord; First Vice-President, Prison Physician Section, American Prison Association.

Address Before the Prison Association at St. Paul, Oct. 8, 1914.

## COURTS—LAWS.

**Shall Silence of Defendant Be Subject of Comment?**—Following is a copy of a letter from the chairman to the members of the Committee on Courts of Criminal Procedure in New York City:

"43 Cedar Street, New York, January 26, 1915.

"Dear Sirs: I am in receipt of a copy of the Fourth Report of the Law Reform Committee of the Association of the Bar of the City of New York, dated December 11, 1914, signed by George Battle, chairman, and other members of that committee, which has been forwarded to me by Secretary Myers of the New York County Lawyers' Association, with a request that the Committee on Legislation and that of the Courts of Criminal Procedure confer with each other concerning the report. It is therefore officially before our committee, and I hope each member thereof will carefully consider it.

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"I am not informed whether any or all of the members of the bar association committee have had much experience in criminal practice; I know that our committee does include many gentlemen of large experience therein, and it would be a matter of great satisfaction to me as a member of the committee and its chairman, if they would each carefully look into this report and give their opinion of the measures therein proposed.

"Notwithstanding the names of good lawyers attached to this report, I have ventured to doubt the wisdom of some of its recommendations. Recommendation I of this report, being No. 60 of that committee, is to the effect that in a criminal case the jury may consider the defendant's failure to testify in his own behalf, and the judge may so charge the jury. This recommendation immediately becomes suspicious to me when I find that the newspapers favor it. Reflection fails to convince me of its value.

"To begin with, I think it is axiomatic in our profession that the judicial power should not even entertain a charge of crime against any one, much less put him to the expense, danger and humiliation of publicly defending such a charge without sufficient direct positive and affirmative proof against him to justify a conviction if unanswered. On no other basis is civilized society possible. It follows, therefore, that in every criminal case, whether prosecuted by indictment, information or otherwise, the state has begun by alleging that it has some evidence sufficient if uncontradicted to justify a conviction. Only upon this basis can the government in a civilized community justify the forcible arrest and public trial of any citizen. This true and scientific theory is commonly expressed by the formula that every man is presumed to be innocent. And not only can no person be charged or convicted on mere suspicion, but no number of suspicions piled one on another can justify such a charge or conviction.

"Now it is perfectly clear that the failure of an accused to answer his accusers while it may under certain circumstances create or strengthen a *suspicion* against him is not *evidence* of the truth of the charge. Why then should it be judicially received as such? If the real evidence for the prosecution does not convict, the defendant should not be required to answer. If it does in fact make a case against him he should be called upon to defend himself by the production of such legal evidence as he may be able and willing to furnish. If he chooses to confine his defense to the production of documents or disinterested witnesses how can *that choice* be scientifically stated as evidence bearing on the fact in controversy?

"It is said that in the ordinary affairs of life silence is confession. This is not true as a general proposition. In thousands of instances innocent people are daily silent under calumny. We have instances in social life, in those of unanswered criticisms upon the judges of our courts; and others, including the timid, the proud, the indifferent. Silence is evidence of guilt or liability only in cases where the party is properly called upon to answer. But the very question here is whether a defendant should be so called upon in a criminal case.

"That a jury is likely to construe the silence of an accused against him is well known. This natural suspicion the accused and his counsel must reckon with. But the proposed bill goes farther; it seeks to have the court charge the jury to the effect that they may consider this silence as *proof* of the fact in controversy, which is absurd. And it may be mischievous. Suppose a case where delicate family matters or sexual relations are involved. I can well understand how a man of honor falsely charged might hesitate under certain circumstances to testify in his own behalf. Such instances have found their place in history as well as fiction.

"The errors involved in the theory of this bill are two: *First*, that silence of a defendant in a judicial proceeding is or ought to be proof of another fact. That is to say, that a falsity may become true because not specifically denied. *Second*, that the silence of the defendant on the trial is not sufficiently reckoned against him in the minds of the jury, even when qualified by the warning of the judge that it is not evidence bearing on the fact in controversy.

"Recommendation II of this report (61 of the committee) is to permit the adoption of a blanket or joint indictment:

When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or

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*for two or more acts or transactions of the same class of crimes or offenses.*

I regard the last part of this amendment as above italicized as of doubtful utility. Why should a defendant be required to defend two charges at once because they happen to be capable of being placed in the same class, whatever that may mean?

"I was present at the last meeting of the New York Bar Association when this report was adopted; the attendance was small, less than one-twelfth of the membership; the hour was late and the report was adopted absolutely without discussion.

"I am aware that our committee contains lawyers of experience, particularly in criminal cases, much beyond my own, and I therefore offer these suggestions merely for what they are worth and in order, if possible, to obtain the opinion of all the members of the committee on these important matters.

"Yours sincerely,

"ALFRED B. CRUICKSHANK, Chairman."

**An Argument for the Public Defender.—Introduction.**—It has been said that this is the "era of the Great Sob, and the time of sentimental reformers who weep over and wage fierce warfare against imaginary wrongs"; that the "withers of the public have been wrung with the wails and the woes of the wicked"; and that the advocates of the public defender are sentimental reformers, "amiable but misguided."

Criminal Law Codes are:

1. Of Criminal Procedure.
2. Of Penal Law.

Codes of Criminal Procedure are for the benefit of all, guilty, as well as innocent. But they are primarily established for the protection of innocent persons. Ferri says they are for *galantuomini*."

Penal Codes lay down the punishments to be measured out for those who have been convicted.

The public defender has nothing to do with the Penal Code. His office comes within the Code of Criminal Procedure.

Under our law, moreover, a man is presumed to be innocent. Though this presumption is not carried out in practice, yet it is theoretically laid down by our law.

The advocates of the public defender, as advocates of the public defender, then, do not agitate anything for or against the *criminal*, but agitate for a change in the procedure according to which an *accused person* is to be brought to trial and tried.

**Definition.**—A public defender means an officer appointed, or elected, as the district attorney is, and charged by government with the duty of defending prisoners.

The immediate demand is for a public officer to defend those unable to pay for private counsel. The ultimate demand is the abolition of all inequality in this regard, between the poor and the rich, and the institution of a public defender who will be in duty bound to defend all; and who will be the only recognized counsel for the defense. The administration of justice is a constituent function of the State. (Woodrow Wilson, "The State"). The time will come when, just as there has been an evolution from the private warfare of the past to the semi-civilized administration of justice of the present, the private Bar will be abolished, as the private physician is almost abolished in England today, due to the National Insurance Act. The profession will not be injured; it will be elevated, and benefited. But even if it would be injured, the community interests are primary.

**Qualification and Explanation.**—Theoretically, then, we ought to have a public defender everywhere. Practically, we ask for such an office only under certain conditions, and in certain circumstances, namely, where the population is large and heterogeneous, and where there is a large number of poor, ignorant, and helpless persons. The State Legislature should lay down general propositions, and each unit in the State (what this unit is must be determined) should be given the right to choose whether it will or will not have a public defender.

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*Historical and Preliminary.*—The reform is not a revolution. It is evolutionary.

1. *Witnesses.* (a) In the history of English law there were at first no witnesses for the defendant in a criminal case. The jurors were the only witnesses, and they were accusers. (b) Before the reign of William and Mary, 1688, a prisoner could call no witness in his behalf. (c) In the time of Queen Anne, the situation had changed: witnesses could be so called. (d) Finally, in 1808, the defendant took the stand on his own behalf for the first time.

2. *Counsel.* (a) In the beginning, no counsel was allowed to a prisoner. (b) In 1688, counsel was allowed a prisoner in capital cases. (c) Later, in felony cases. (d) In 1836, a bill was passed allowing counsel to prisoners in all cases.

3. *District Attorneys.* (a) Crime was at first committed in private war; and the punishment of crime was private vengeance. (b) Then the State laid down the rules of the fight; but still allowed private warfare. It acted only as referee, or umpire. (c) On the Continent there developed early, public prosecutions. Private prosecutions were abrogated. The State recognized its duty in administering justice, and in preventing turmoil, constant disorder, and eternal feuds. (d) In England, State prosecutions developed, but only at the instance of private persons. Stephen, in his *History of the Criminal Law in England*, writing in 1881, says that prosecutions were still private. (e) The history of the District Attorney in America is interesting, but confused. Here we do not allow private prosecutions: a private person who has been made the victim of crime, is only a complainant, but it is within the district attorney's discretion to prosecute or not to prosecute. In other words, the power of prosecution is entirely the opposite to that in England: it is completely public. No "civil party" exists as on the Continent. American States seem to have recognized the important function of the administration of justice, and to have placed it where it belongs—in the hands of the State. If prosecution is a feature of the administration of justice, why is not defense?

4. *Socialization.*—The public defender movement is in line with and is part of the great movements of socialization that have been sweeping over Europe for the past seventy-five years, and over America for the past twenty.

*Argument—A. General.*—The public defender should be established immediately in places having the following characteristics. It should be established at once, also, in all other places upon grounds already advanced, and to be advanced in the course of the discussion; but the pressing necessity is:

1. Where there is a large population.
2. Where there is a heterogeneous population.
3. Where the population is, in general, or in large numbers, poor, ignorant, and helpless.

Corollaries of points 1, 2 and 3:

4. Where there is a great number of criminal cases.
  5. Where the tone of the criminal bar is low.
- grand jury is a rubber stamp for the district attorney.

6. Where jurymen are not intelligent, and not independent.  
All these qualities need not concur. But where they do, the necessity for a public defender is urgent.

*Argument—B. Specific.—I. Private Lawyers in General.*—Private advocacy leads to the following:

1. Unscrupulous defenses are apt to be set up. Appeal is made, in proof, to general experience, newspaper reports, and the opinions of Appellate Courts. Where rich men are involved the scandal is infamous, and oft recurring. An Attorney paid by an individual is likely to recognize him, rather than truth and justice, as master. A public defender paid by the State would not be likely to indulge in such proceedings in behalf of an individual; nor in behalf of the State, since the State is impersonal, and the law will direct him to set up a fair defense; and no inducement, except on rare occasions, will lead him to fabricate a defense.

2. Perjury is likely to be suborned by attorneys. It is also likely to be committed by clients with the consent, or connivance of counsel. A public defender would have no temptations, or very, very few of them.

3. There is delay in bringing some cases to trial: because, (a) of the juggling of the calendar by the district attorney, and the helpless condition

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of the prisoner whose attorney will not interest himself to demand an immediate trial, as the rich can do through their attorneys. The public defender would have no reason for allowing the delay; and, because, (b) of the fact that attorneys who are waiting for fees from clients will not care to try their cases before payment. If the client is in jail he waits there; if he is on bail he enjoys freedom longer than he would if a public defender were in office.

4. There is delay during the trial of a case. Obstructionist tactics are resorted to. This would not be true in the case of the public defender. Such tactics are not so common in England where the tone of the bar is higher than it is in our large cities, and where the judges have more power, and wield that power, and are more imbued with the traditions, and the dignity of the profession of the law.

5. Private lawyers are not likely, and actually in many cases, do not give advice to plead guilty, when the interests of the client demand such a plea. This is because the trial of a case is more remunerative. This would not happen, except, in those very rare cases, when the public defender wanted to come into the spotlight upon some extraordinary occasion.

6. *II.—Assigned Counsel.*—Assigned counsel are, in large cities, usually those who are: (a) political henchmen, recommended to the judge by political leaders, in celebrated cases for purposes of publicity; or in murder cases for the fee paid by the county. In New York County the fee is \$500; (b) men who are about the court. These lawyers are given assignments which are in all cases except murder, without pay.

(a<sup>1</sup>) In small places proper care will be given to these assigned cases by counsel, for, (L) Counsel are watched by their neighbors; they wish their neighbors' good opinion; (B) they have fewer cases, and so more time for the proper preparation of their cases. (b<sup>1</sup>) In large places proper care will not be given to these cases, for (L) the individual is lost in the crowd, (B) the corps spirit of the Bar is low; (y) counsel has very little, if any, personal or professional interest, since (1) he is not watched in the scramble; (2) he is occupied to such an extent that he cannot give the necessary time to proper preparation of the assigned cases.

These cases are not distributed by the bench over the whole profession, but are concentrated and piled on the shoulders of the few criminal law practitioners. Some of these lawyers come into court and see their clients for the first time on trial day, and hear their stories then and there.

7. Counsel recommend (a) in many cases pleas of guilty to get rid of the bother and the burden of going to trial. There is no pay, be it remembered. (b) When there is a fee promised, counsel postpone, and delay trial till they are paid.

8. The Criminal Courts Committee of the New York County Lawyers' Association sent letters of inquiry to the district attorneys and the judges of the several counties of the State of New York. The district attorneys and the judges report that assigned counsel are (a) young and (b) inexperienced.

In large centers of population the charge is not that they are young and inexperienced; but that they are (a) incompetent, though they practice in the criminal courts day in and day out; (b) that they are neglectful of their clients' interests, and (c) that they have no time to prepare their assigned cases.

The bench admit that experienced and able members of the bar are not assigned. Why not? Is the tone of the bench as high as it ought to be? Why not obligate lawyers in any of many ways to do this small service to the community which gives them great privileges? This meets the argument of the bench, who uphold, almost unanimously, the present system, that counsel are almost invariably regardful of their duties, and that no miscarriages of justice take place in the courts. Is this probable?

In the rare cases when assigned counsel are competent, they have no such means of gathering evidence as the district attorney has; for (a) they cannot be expected to disburse moneys in furtherance of justice to their client; (b) they have not the power, (c) the dignity of office the district attorney has; nor (d) is respect paid them as to the district attorney.

A public defender would be as able, as honest and as diligent as the district attorney is now.

*C. Miscellaneous (9, 10, 11), and Main (12) Argument.*

## ADULT PROBATION LAW

9. Poor men have no appeals, because of the prohibitive cost.

10. Rich men have almost all the appeals. These they would not get if they were poor; or if they had no private attorney, but had to depend on the discretion of a public defender to bring an appeal, just as a poor man would. An approximation to equality before the law would be brought about.

11. In some cases an ambitious and unconscientious prosecutor (a) gives out grand jury proceedings for the purpose of influencing the public in general, and in particular the prospective petty jury; (b) endeavors to influence the public mind by making statements to the newspapers against a prisoner; (c) presents a biased view of the facts to a grand jury, and the grand jury almost invariably indicts, since, not only in such cases as these, but in almost all cases (a) the Charles S. Lobingier, Judge of U. S. Court, Shanghai.

The district attorney thus puts a prisoner at a great disadvantage. His tremendous power is directed against the weak force of the individual. In such cases the power of the public defender would counteract and neutralize the damage the district attorney might otherwise do.

12. In all other cases, as well as in the one mentioned above, the present system is *side heavy*.

The district attorney has all the great power of the county; all the money, the detectives, the process servers, the majesty and the awe connected with the public office representing the state; the respect and awe of the jury, and the aid of the bench. The individual is usually poor, ignorant and helpless. Even the rich are at a disadvantage.

*Effects of the Institution of a Public Defender on the Law of Criminal Procedure.*

Intelligent laymen and many lawyers wish to see:

1. The presumption of innocence abolished.
2. A two-thirds majority of a petty jury sufficient for conviction.
3. That sham of a rule, that no inference is to be drawn against a prisoner who does not take the stand, abolished.
4. Appeals allowed the state from supposedly unjust acquittals.
5. The rules of evidence abolished, and free proof to reign.

Stephen, in his History, says that the presumption of innocence came into use because the state recognized its powerfulness and the individual's weakness, and out of its generosity makes him a concession, which is a safeguard. There is no presumption of innocence in England in the times when the state is weak and unstable. This theory does not seem to be sound. The true theory is, perhaps, not that the state was generous, but that the state was *forced* to give up some of its power; the individual wrested the safeguard from it. Whatever the theory, the *fact* is that the presumption of innocence is important only when the state is strong and the individual weak. When both the state and the individual are on the same plane there is no more excuse for it.

A public defender would counterbalance the powerfulness of the district attorney. There would be no need, then, for this presumption.

Points 2, 3, 4 and 5 have such a strong hold on the intellects and the imaginations of men, albeit in some cases, the hold is not clearly reasoned, and the causes not analyzed, because the individual is jealous and fearful of the power of the state, and wants to retain these safeguards to protect his weakness and strengthen it. Take point 5, for example. The rules of evidence appeared when the state had become extremely strong and stable—the beginning of the Nineteenth Century. That century saw their great efflorescence.

Those who are working for these five reforms should note that they might be considered dangerous under present conditions. But there could be no objection to them after the institution of a public defender. *Cessant ratio cessat lex*. There being no longer any fear that the individual would be at a disadvantage in the face of the state, since the public defender would have the authority and the power and majesty of the state, these reforms would not be opposed.

R. F.

**Adult Probation Law in Illinois.**—A committee of the Civic Federation of Chicago proposes certain amendments to the Adult Probation Law. The italics below designate the proposed changes in the present law.

A Bill for an Act to amend Sections 2, 3, 4, 7, 9, 12, and 13 of an Act entitled "An Act providing for a system of probation, for the appointment and

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compensation of probation officers, and authorizing the suspension of final judgment and the imposition of sentence upon persons found guilty of certain defined crimes and offenses and legalizing their ultimate discharge without punishment."—Approved June 10, 1911. In force July 1, 1911.

SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That Sections ..... of an Act entitled "An Act providing for a system of probation, for the appointment and compensation of probation officers, and authorizing the suspension of final judgment and the imposition of sentence upon persons found guilty of certain defined crimes and offenses, and legalizing their ultimate discharge without punishment," approved June 10, 1911, in force July 1, 1911, be and the same are hereby amended so as to read as follows:

SEC. 2. *Any defendant who has never previously been convicted of a crime, who has entered a plea of guilty or been found guilty by the verdict of a jury or the finding of a court of a violation of a municipal ordinance, where the offense is also a violation in whole or in part of a statute, a misdemeanor or a crime, except murder, manslaughter, kidnapping, incest, rape or arson, may, after entry of judgment and nothing remains to be done by the court except to pronounce sentence, request the judge to be admitted to probation according to the provisions of this Act.*

SEC. 3. *Before granting or releasing any defendant on probation, the court shall require the probation officer to investigate the case of such defendant as accurately and as fully as diligence will enable, to ascertain: (a) the personal characteristics, habits, associations and previous conduct of such person; (b) the names, relationship, ages and conditions of those dependent upon him for support and education, and (c) such other and further facts as may aid the court as well in determining the propriety of probation as in fixing the conditions thereof.*

Orders granting or refusing release on probation shall be entered of record. Application for release on probation may, in the discretion of the court, be granted if it shall appear, to the satisfaction of the court, both that there is reasonable ground to expect that the defendant may be reformed and that the interests of society shall be subserved. If such application is granted, the Judge granting the same shall thereupon enter an order continuing the cause for a period not exceeding six months in cases of violation of municipal ordinances where the offense is also a violation, in whole or in part, of a statute and not exceeding one year in the case of other offenses enumerated in Section 2 of this Act, and shall by such order fix and specify the terms and conditions of the probation of such defendant as herein provided. A cause continued pursuant to the provisions of this Act shall be deemed subject to the jurisdiction of the court in which it is pending, or any judge thereof, for the full period of its continuance, during which time orders may be entered with respect to the conditions of probation, or final sentence imposed without the formal setting aside of such order of continuance.

SEC. 4. Release on probation shall be upon the following conditions:

(1) That the probationer shall not, during the term of his probation, violate any criminal law of the State of Illinois, or any ordinance of any municipality of said State as limited by Section 2 of this Act.



## ADULT PROBATION LAW

(2) That if convicted of a felony or misdemeanor, he shall not, during the term of his probation, leave the State without the consent of the court which granted his application for probation.

(3) That he shall make a report once a month, *or as often as the court shall direct*, of his whereabouts, conduct and employment, and furnish such other information relating to the conditions of his probation, as may from time to time be required by rule or order of court, to the probation officer under whose charge he has been placed, and shall appear in person before the court at such time as the court may direct or the rule of court provide.

(4) That he shall enter into a bond or recognizance in such sum as the court may direct, with or without sureties, to perform the conditions imposed, which shall run to the People of the State of Illinois and may be sued on by any person thereunto authorized by the court for the use of the parties in interest as the same may appear.

And the court may impose any one or more of the following conditions:

(1) That he shall make restitution, *or reparation*, in whole or in part, immediately or within the period of probation, to the person or persons injured or defrauded.

(2) That he shall make contribution from his earnings for the support of those dependent upon him, subject to the supervision of the court.

(3) *That he shall pay any fine assessed against him, as well as the costs of the proceeding, in such installments as the court may direct, during the continuance of the probation.*

SEC. 7. Upon the termination of the probation period, the probation officer shall report to the court the conduct of the probationer during the period of his probation, and the court may thereupon discharge the probationer from further supervision, *or extend the probation period not to exceed six months in cases of violation of a municipal ordinance where the offense is also a violation, in whole or in part, of a statute, and not to exceed one year in other offenses.* When a probationer is discharged upon the expiration of the probation period, or upon its earlier termination by order of the court, entry of the discharge shall be made in the records of the court, and the probationer shall be entitled to a certified copy thereof.

SEC. 9. The circuit court of each of the several counties in this State may appoint a probation officer to act as such for and throughout the county in which he shall be appointed. The circuit court of any county may appoint such number of additional probation officers for such county as the court may deem to be necessary or advisable; Provided, the number of probation officers to be appointed for any county shall in no event exceed one for every fifty thousand inhabitants for such county, the school census preceding any appointment to be the basis for the determination of the number of inhabitants of such county. \* \* \* Any circuit court, in any county in which there are five or more probation officers, may also, in its discretion, appoint a chief probation officer in addition to the number of probation officers herein provided for. Said probation officers shall be of good character, shall possess such other qualifications as may be provided by rules to be adopted by such courts respectively, and may by such rules each be required to give bond in a sum not exceeding five thousand (\$5,000.00) dollars, conditioned for the

## ADULT PROBATION LAW

faithful discharge of the duties of such probation officer, and otherwise as provided by said rules such bond to be with such sureties as may be approved by the court. Said probation officers shall serve as such from the date of their appointment, shall be subject to the orders of the courts appointing them, and shall be removable in the discretion thereof by an order duly entered of record. Said circuit court may adopt general rules not inconsistent with the provisions of this Act, and promotive of its letter and spirit, providing, among other things, for the qualifications of probation officers, their duties, and such other matters as may seem expedient. In any city in this State having a population of fifty thousand or less inhabitants, as shown by the preceding school census, in which city there has been or may hereafter be established a municipal or city court, such municipal or city court may appoint one probation officer for such municipal or city court, in which case the number of probation officers to which any county is entitled, as above provided, shall be reduced by the number of municipal or city courts in said county established for cities having a population of fifty thousand or less inhabitants. The remaining probation officers to which any county may be entitled as aforesaid shall be equally apportioned between the county and the several cities, if any therein that severally have a population of more than fifty thousand inhabitants. Such probation officers so apportioned to such county shall be appointed by the circuit court of said county, and such probation officers so apportioned to such cities shall be appointed by the municipal or city courts in said several cities. The judges of the circuit court of any county and of the municipal or city court therein established for cities having a population of more than fifty thousand inhabitants, shall meet as a unit body at such times as they deem proper, and at any such meeting may appoint a chief probation officer, to act as such over all the probation officers appointed by any of said courts. Said judges may, at any such meeting, adopt general rules not inconsistent with the provisions of this Act, but promotive of its letter and spirit, and transact such other business concerning the subject-matter of this Act as to said judges may seem proper. Said judges may, at any such meeting, appoint a committee of such number of them as they may determine to exercise the ministerial powers of said entire body of judges and the powers of appointment and removal of the chief probation officer, such committee to report to the entire body of judges at such time as may be required by rules or by specific order.

SEC. 12. The duties of probation officers shall be:

(1) *To investigate as required by Section 3 the case of any person who has invoked the provisions of this Act. Full opportunity shall be afforded a probation officer to confer with the person under investigation when such person is in custody.*

(2) *To notify the court of any previous conviction for crime or previous probation of any defendant invoking the provisions of this Act.*

(3) *All reports and notifications required in this Act to be made by probation officers shall be in writing and shall be filed by the clerk in the respective cases.*

(4) *To preserve complete and accurate records of cases investigated, including a description of the person investigated, the action of the court with respect to his case and his probation, the subsequent history of such person if he becomes a probationer during the continuance of his probation, which*

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records shall be open to inspection by any judge or by any probation officer pursuant to order of court, but shall not be a public record, and its contents shall not be divulged otherwise than as above provided, except upon order of court.

(5) To take charge of and watch over all persons placed on probation under such regulations and for such terms as may be prescribed by the court, and giving to such probationer full instructions as to the terms of his release upon probation and requiring from him such periodical reports as shall keep the officer informed as to his conduct.

(6) *When any person on probation removes from the county where his offense was committed, it shall be the duty of the officer under whose care he was first placed to report the facts to the probation officer in the county to which the probationer has removed; and it shall thereupon become the duty of such probation officer to take charge of and watch over said probationer the same as if the case originated in that county; and for that purpose he shall have the same power and authority over said probationer as if he had been originally placed in said officer's charge; and such officer shall be required to report in writing, once a month, the results of his supervision to the probation officer in whose charge he was originally placed by the court.*

(7) To perform such other duties as are provided for in this Act or by rules of court, and such incidental duties as may be implied from those expressly required.

SEC. 13. It shall be the duty of the chief probation officer, appointed as provided in this Act, to supervise and control the work of all subordinate probation officers under his jurisdiction and control as herein provided, subject to such rules and regulations as may be adopted by the court or judges as herein provided, and to supervise the conduct of probationers to such extent as the court or said judges, and the rules herein provided for, may direct.

Any chief probation officer shall have authority to suspend any probation officer under his supervision for a period of not exceeding thirty days, but may not discharge, and it shall be the duty of such chief probation officer promptly to file charges against any probation officer so suspended by him with the court or judges appointing such probation officer, and said court or judges shall thereupon investigate said charges and may hear evidence, and shall act thereon as the interests of justice and the good of the probation service may require.

The records concerning probationers shall be kept in one office under the supervision of the chief probation officer, to whom all such probation officers must report. It shall be the duty of the board of county commissioners or supervisors of each county in this State in which probation officers may be appointed under the provisions of this Act, to furnish suitable rooms and accommodations, equipment and supplies for said probation officers and clerical assistants in that jurisdiction, and for the keeping of the records, equipment and supplies of the office. The number of clerical assistants shall be determined by the circuit court, *and shall be appointed by said chief probation officer.* Salaries of said clerical assistants shall be fixed by the board of county commissioners or supervisors.

Section 9 above would have the effect of more than doubling the number of adult probation officers in Chicago and Cook County.

R. H. G.

## CONFLICT OF CIVIL AND CRIMINAL LAW

### De Luca on Authority of Military Commissions in Time of Peace.—

An article, by Frances De Luca, entitled "*L'Essenza del ricorso in Carrazione e il capoverso dell' Art. 500 del nuovo codice di procedura penale*," in "*Il Progresso del Diritto Criminale*" (July-August, 1914), contains a strange acceptance of the American theory of government. "The Court of Cassation is instituted to maintain the exact observation of the law" (Art. 122, C. G. A.). It has, therefore, power to inquire into the constitutionality of the court below. De Luca, prior to the new code, held that this gave it jurisdiction to set aside judgments of military courts, sitting in times of peace ("*Il progresso*, etc.," Vol. II [1910] pp. 231-239) and the new code of penal procedure of 27 February, 1913 (Arts. 136, 500) has been drawn to remove all doubt of the correctness of his contention. Not satisfied with this, however, he now writes, following the English theory, "in fact, it cannot be denied that according to our laws (military and civil) no power is given—even to Parliament, subordinate, as it is, to the supreme fundamental law of the State—to form extraordinary commissions or courts in times of peace" (p. 216). Then adopting the American system, he desires the Court of Cassation to be given power to set aside judgments of the Senate sitting as a high court of justice, which he calls one of "the institutions of the past, left in our and other judiciary systems as antiquated and as fossilized." It is refreshing, after all we have heard of the recall of judges, to find our system of a supreme judiciary advocated from a source, not common but civil; not English or Germanic, but Roman.

J. L.

**Gaetano Leto on the Conflict of Civil and Criminal Law in Cases Relating to Marriage.**—Gaetano Leto has a long article in "*Il Progresso Del Diritto Criminale*" (May, June, July, Aug., 1914) in which he takes up the question of the conflict of civil and criminal law. For many civil matters must be decided in a criminal trial. There are many systems; the criminal judge must decide all civil matters, arising in a criminal suit; he must certify them all to the civil court; he must decide all incidental civil questions; or else that he may certify them.

He takes up civil questions of *status marriage*, a civil matter, which may affect bigamy, adultery, fornication, and incest. If the penal court decides this question incidentally one way and subsequently, a civil court decides it, as the principal question the other way, what can be worse? But, if the jurisdictions are to be separate, and the judges differently qualified, the criminal judge's decision cannot be given weight in the civil courts. The criminal judge must know all facts necessary to the case, but he need not decide them. If the defense to a charge of bigamy is no prior marriage, the criminal court, of natural competence, convicts or acquits the accused, his decision as far as the marriage is concerned simply stands that the celebration was or was not proved. He in no wise has taken upon himself civil jurisdiction. As the Romans well knew "*cognitio*" is not "*judiciarii*." The judge of the probate court, "*de haereditate cognoscit, universam incidentem quaestionem quae in iudicium devocatur, examinare, quoniam non de ea, sed de haereditate pronunciat*." The criminal court must know the facts, and, if the only way that he can know them is by a judgment by a court of competent jurisdiction, he should certify an issue, and the judgment thereon should be pleaded as a defense. It is evidence, of the fact. The district attorney can bring a civil suit in order to prepare his criminal prosecution. In fact, if the marriage appears to be but a relative nullity (where annulment is required to avoid, as where it is celebrated by an official without jurisdiction), it is the duty of the criminal court to certify an issue. In other words, Prof. Leto would have the criminal court certify all questions of public or private law to a judge of competent jurisdiction, when there is any doubt as to the facts.

In the courts in America, this question does not rise; men are convicted of bigamy and the legality of the first marriage is passed upon by quarter sessions. The question is not of the importance that it enjoys in Italy, because our civil judges do criminal work, but still it is of importance, for a man who has served a term for bigamy may have his marriage annulled as invalid in a subsequent civil court. In Pennsylvania, a statutory anomaly exists in that the innocent party to a bigamous union, declared as bigamous by the criminal court, cannot remarry, without obtaining a decree of annulment! In the latter proceedings, the record of the criminal court would be evidence of the prior marriage, and

## CONFLICT OF CIVIL AND CRIMINAL LAW

yet after this, the first wife might be refused a share in the estate under the intestate laws!

Prof. Leto's theory would contain the correct and logical principal—the criminal court should seek judicial determination of all facts, not in its province—but it should not do so by certifying an issue or by any method tending to delay. A defense, based upon the existence or non-existence of a status, the interpretation of a contract, or any claim, which might form the basis of a civil suit, should be heard and finally determined, at the trial of the criminal action, by the court sitting as a civil tribunal.

J. L.

### PENOLOGY.

**Prison Bills in New York.**—The following is a prospectus of bills relating to the prison system that will be introduced in the legislature of the state of New York within the present session:

I. Abolishing the Commission on New Prisons and authorizing and directing the Commission on Prison Reform, with the approval of the Superintendent of Prisons;

(1) To select and purchase a site of not less than 1000 acres for a new prison to take the place of Sing Sing, the same to consist of farm and wood land situated within 75 miles of New York City, and to invite and approve plans for a new prison on the cottage plan and to begin the work of construction thereof;

(2) To select and purchase farm land in the vicinity of Auburn and to invite and approve plans for buildings to be erected thereon for the custody and employment of prisoners in Auburn Prison and to begin the work of construction thereof;

(3) To invite and approve plans for additional buildings to be erected on the State Farm at Valatie for the accommodation of women committed to the State Prison for Women at Auburn and to supervise the construction thereof;

(4) To invite and approve plans for buildings for the custody of male and female criminal defectives respectively on the prison site at Wakefield, and to begin the construction thereof;

(5) To invite and approve plans for the construction of buildings on the tract of 800 acres recently acquired by the State for a Farm Colony for Tramps and Vagrants, as and for a free farm colony for discharged and paroled convicts.

II. Providing for the institution at Sing Sing Prison of a Prison Medical Board of three physicians of standing, one of whom shall be an alienist, with proper equipment and expert assistance, to examine into the physical and mental condition of all persons committed to the prison and to report their findings to the Superintendent of Prisons, and providing, further, that all persons hereafter sentenced to imprisonment in a State Prison shall first be committed to Sing Sing for detention until such examination shall have been approved by the Superintendent.

III. Providing that all convicts in any State Prison found to be mentally defective, either by the State Commission for Mental Defectives or by the Prison Medical Board, shall be transferred to and placed in the custody of the Prison Medical Board at Sing Sing Prison for such special care and treatment as they may require, until proper provision has been made for them elsewhere by the State.

IV. Providing that the Governor be authorized to appoint local Boards of Pardon and Parole in connection with each of the State Prisons and Reformatories, consisting of five citizens to serve without pay, for the purpose of investigating all applications for pardon or parole and of reporting thereon to the Superintendent of Prisons.

V. Amending the Penal Law so as to require all judges, sentencing convicts to confinement in a State Prison to impose an indeterminate sentence, without maximum or minimum limit.

VI. Reorganizing the State Board of Parole—the Board to consist of five members, at least two of whom shall be lawyers of proved capacity, to pass finally on all applications for parole in the State Prisons.

VII. Providing for the abolition of capital punishment and fixing imprisonment for life as the extreme penalty for murder in the first degree.

VIII. Providing that all first offenders sentenced to imprisonment in a State Prison for a minimum term of more than a year, shall at the expiration of a year after such sentence become eligible for parole.

## PRISON BILLS IN NEW YORK

IX. Providing for the creation in the office of the Superintendent of Prisons of an employment bureau for paroled and discharged convicts.

X. Providing for the establishment in the office of the Superintendent of Prisons of a Bureau of Criminal Statistics for the State of New York.

**Report of the Illinois State Reformatory.**—The twelfth biennial report of the managers of the Illinois State Reformatory at Pontiac has just been received. It covers the period ending June 30, 1914. The report contains a great deal of data that should be interesting to the general public. Among other things, we notice that the General Superintendent urges the purchase of additional land for the institution. Two hundred acres of land are now available for farming purposes. He says that the statistics of the institution show that 90 per cent of their boys who are paroled as farm hands, after having been taught the art of farming at the institution, make good farmers and substantial citizens. He recommends, therefore, that at least 300 acres of land, in addition to that now held, be purchased for this purpose. The farm superintendent also urges that this step be taken, and adds that in a short time the products of the farm will be sufficient to supply the institution.

The General Superintendent calls attention to the fact that the Ohio State Farm has recently purchased 1,000 acres for this purpose.

The population of the reformatory has been slowly decreasing for several years, owing to several facts: *First*, boys who are found guilty of crime in the municipal courts of Chicago are no longer sent to the reformatory, but are confined in Cook County institutions. *Second*, the criminal courts of Cook County commit a large percentage of those found guilty to Cook County institutions. *Third*, a large number of boys, formerly committed to the state reformatory, are now sent to the St. Charles School for Boys. *Fourth*, courts are taking advantage of the recent law which gives all courts of record the right to place certain first offenders upon probation.

The superintendent recommends that only boys who are over the age of 16 years should be sent to the state reformatory; that the state laws be so changed as to include all offenders under the age of 16, and that the age limit be raised from 16 to 25 years inclusive. He would admit, therefore, only first offenders who are aged from 21 to 25 years inclusive, and a provision should be made that in case it should become definitely known after commitment to the reformatory that a person had been guilty of previous offenses, or had been previously convicted or served time in any other reformatory or penitentiary, that he be immediately transferred to the state penitentiary.

R. H. G.

**Prisoners' Mail.**—In Vol. 4, No. 6, March, 1914, beginning page 920 of this Journal, we published a note under the above title, which summarized the provisions in the various states of the Union with reference to mail privileges for convicts. The data there published came from the hand of J. J. Sanders, Parole Clerk of the Arizona State Prison. We have just received a pamphlet under this title, by the same author, which contains some information that we set forth here to supplement the note referred to above. Since that note was published, Mr. Sanders has secured information as follows:

In Arkansas, the inmates of the state prison are allowed an unlimited daily letter mail. They are also allowed the newspapers, periodicals and magazines.

## FAR EASTERN BAR ASSOCIATION

In Delaware, the inmates of the state prison are allowed to write one letter a month. In matters of importance, special permission for additional letters may be obtained from the warden. No daily newspapers are allowed, but the reading of current magazines is permitted.

In Illinois, the inmates of the state prison are divided into three grades. First grade prisons are allowed to write one letter every two weeks, and all inmates are allowed to write one letter each month. They may receive all letters sent to them. One daily newspaper and all current magazines are allowed.

In Louisiana, the inmates of the state prison are allowed the privilege of the daily mail, including the daily papers and current magazines.

In Nebraska, convicts in the state prison are allowed to receive all letters sent to them. They are permitted to write four letters a month, with special privileges in matters of importance. They are allowed also the daily newspapers and current magazines.

In Utah, the inmates of the state prison may write four letters a month. Second grade men are allowed to write but one letter a month. All are permitted to receive daily papers and magazines.

R. H. G.

### MISCELLANEOUS

**Far Eastern American Bar Association.**—A meeting to effect the final organization of the Far Eastern American Bar Association was held in the session hall of the United States Court for China on Dec. 7. A movement has been on foot for some time looking toward a permanent association of American lawyers practising throughout the Far East and it is the general belief that Shanghai, on account of its central location, and as the seat of the only United States Court in the Orient, should be its headquarters.

Among those who have given their formal adherence to the movement are:

Judge Charles S. Lobingier, Earl B. Rose, T. R. Jernigan, Arthur Bassett, Edgar P. Allen (Tientsin), William S. Fleming, Stirling Fessenden, Joseph N. Wolfson (Manila), James B. Davies, Cecil R. Holcomb, Arthur S. Allen, H. D. Rodger, M. L. Heen, Harry A. Lucker (Tientsin), Richard T. Evans (Tientsin), Ralph A. Frost (Hankow), C. W. Rankin (Soochow).

The Constitution, already signed by most of the above, specifies as the objects of the organization:

"The better to maintain the dignity, honor and interest of the American legal profession in the Far East, to promote and improve the *morale*, efficiency and solidarity of its members, to enable them to keep in touch with the progress of judicial science and its promoters throughout the world and especially in America, to assist in the due administration of justice the courts in which they practice and to secure the general observance of the American Bar Association's Canons of Legal Ethics which are hereby declared part of the rules of this Association."

Active membership is open to "any American citizen residing in the Far East who has been regularly admitted to practice in the Federal Supreme Court, the United States Court for China, or the highest court of any American state, territory or possession."

The admission fee is fixed at \$10, and necessary expenses beyond the amount realized from admission fees are to be met by voluntary assessments voted by the members. The Clerk of the United States Court for China, Mr. Earl B. Rose, is made *ex-officio* Secretary and Treasurer and all those joining before January 1, 1915, are considered charter members.—*The China Press*, Dec. 6, 1914. Chares S. Lobingier, Judge of U. S. Court, Shanghai.

## CONFERENCE OF CHARITIES

**Applied Criminal Law at the University of Rome.**—The circular of the *Scuola d'Applicazione Giuridico-Criminale Presso la R. Università di Roma*, announces the beginning of the third year of the school. It contains a review of the past two years' work, stating its incorporation and the receipt of governmental aid, explaining its location (Via Straderari 19) and showing its increase in the number of students from sixty-four during the second year to seventy-two at the beginning of the third. It then contains the address of Professor Enrico Ferri, Director of the school, in full, notes the committee sent to the Congress at Copenhagen, states that the object of the school is the practical teaching of the application of knowledge to criminal legal matters by means not of theoretical lectures but of practical demonstrations. It then contains a list of the courses to be given in its third year. They are of great interest in showing how facts, considered in America as purely theoretical, are given a practical treatment and a practical value by being taught, as they are, through experiment.

1. Filippo Grisogni.—Practical criminal law and the reform of existing law.

2. Josto Satta. Criminal business law and fiscal police.

3. Sante De Sanctis. Principles of psychology and judiciary experimental psychology.

4. Attilio Ascarelli. Demonstrations of medico-legal practice.

5. Augusto Giannelli. Clinic of insane and neuropathic delinquents.

6. Sergio Sergi. General judiciary anthropology.

7. Enrico Ferri e Silvio Longi. The practice of law and penal procedure.

Questions of jurisprudence and doctrinal and practical examination of actual penal cases.

Debates and public speaking.

8. Alfredo Niceforo. (1) The technique of case preparation. (2) Criminal sociology, and judiciary and prison statistics. (3) Anthropology and demography of the poorer classes.

9. Bruno Franchi. Prison and corrective discipline.

10. Salvatore Ottolengri. Physical and psychical study of delinquents.

J. L.

### The Coming Conference of Charities in Baltimore—

Announcement has been made from the headquarters' office of the National Conference of Charities and Correction of the preliminary program for its forty-second annual meeting at Baltimore, Maryland, May 12th to 19th. The conference will meet under the presidency of Mrs. John M. Glenn, of New York, the second woman president it has ever had.

The program contains the names of over fifty leading charity workers and penologists, and the President of the conference anticipates that this will be one of the largest gatherings of charity workers in the United States this year, on account of the widespread destitution and the demand for methods of relief and social amelioration that will be adequate for these unprecedented conditions. The conference consists of public officials, residents of social settlements, heads of institutions, penologists, delegates from colleges, universities, churches and women's clubs, and others interested in this field.

One of the most important discussions thus far planned will be opened by Prof. Charles R. Henderson of the University of Chicago, who will present a report on "Outdoor Relief in the United States, with the Consideration of Some of the Lessons to Be Drawn from European Experiences." Dr. Edward T. Devine of Columbia University, who recently has accepted a



## CONFERENCE OF CHARITIES

deputy commissioner in the Department of Charities of New York City for the supervision of an investigation of private charitable institutions, will discuss "The Policy of Granting State Subsidies to Private Charities." This division of the program, under the chairmanship of George S. Wilson of the Board of Charities of the District of Columbia, will emphasize the increasing magnitude of public charity and the need of effective co-operation of public officials and private agencies.

The treatment of this field will be supplemented by a study of "The Family and the Community," under the chairmanship of Riley M. Little, secretary of the Philadelphia Society for Organizing Charity, and a large group representing the voluntary charity associations of the larger cities. One of the leading papers will be by Miss Mary E. Richmond of the Russell Sage Foundation, on the importance of case work.

Supplementing and summarizing the accounts that have been issued during the year of measures to combat unemployment, Prof. Henry R. Seager in the section on social legislation will treat the causes and remedies of this evil, and other speakers will explain and criticize the work of employment offices. In this division also will occur a treatment of "Shifting of Taxation to Land as a Means of Relieving Congestion and Poverty," by Frederick C. Leubuscher, president of the Lower Rents Society of New York.

There has been an enormous increase in the last few years of charity workers and others generally known as social workers in the United States, both in professional employment and rendering voluntary service. A unique discussion, therefore, is likely to occur under the committee on education for social work, of which Porter R. Lee of the New York School of Philanthropy is chairman. An attempt will be made to define the requirements and standards of this new profession by such speakers as Jeffrey R. Brackett of Boston, Miss Edith Abbott and Dr. Graham Taylor of Chicago, and Prof. Devine of New York.

The field of health and hygiene is comprehended in a series of discussions on health topics, under the chairmanship of Dr. Richard C. Cabot of Boston, and of social hygiene under the chairmanship of Mrs. Martha P. Falconer, superintendent of the State School for Girls at Darling, Pa. Dr. Cabot's program will include an explanation of the newer methods of hospitals in their social service departments and a symposium on the social education of the physician by Joseph Lee of Boston, and Dr. Charles P. Emerson, dean of the medical department of Indiana University, Indianapolis. Mrs. Falconer's program will be addressed to the question, "How Shall We Suppress Prostitution?"; this following previous considerations at the National Conference of the extent of our scientific knowledge of this subject and the proper use of popular educational methods. Dr. Katherine Bement Davis, Commissioner of Correction of New York City, will give "A Survey of Educational Work," and other speakers will treat subjects such as protective league work, prostitution in rural communities, and methods of scientific investigation.

A series of discussions of great significance, from an educational as well as social standpoint, will occur in the division on "Children," under the chairmanship of C. C. Carstens, secretary of the Massachusetts Society for the Prevention of Cruelty to Children, which will include not only the treatment of neglect and dependency among children, but also a consideration of "The Reaction of Children's Case Work in the Development of the Constructive and Preventive Work of a Community." One of the leading discussions in the field of corrections will pertain to the popular question of payment of wages to prisoners. Dr. Irwin H. Neff, superintendent of the Foxborough State Hospital in Massachusetts, and Dr. G. Linthicum of Baltimore will speak on "The Treatment of Inebriety and Its Relation to Crime."

R. H. G.

## REVIEWS AND CRITICISMS

**LA IDENTIFICACION DACTILOSCOPICA. INFORME DE POLICIOLOGIA Y DE DERECHO PUBLICO.** By *Fernando Ortiz*. Universal Press, Havana.

In this work the author outlines with painstaking thoroughness the different methods of identifying criminals. He reviews the earlier means which were used to this end, such as branding in the Middle Ages, and notes that Mentham favored governmental branding of all citizens in order to facilitate the identification and to remove the infamy which had attached to this method because of its being used only upon felons.

He then reviews the different methods of anthropometric identification, especially that of Bertillon, the best known, in which, however, he finds sixteen objections:

1. That it can be applied only to individuals who have attained their full physical development.
2. That its limitation renders it useless for all men under twenty-five years of age.
3. That this prevents it applying to many delinquents.
4. That it is liable to errors.
5. That the errors lead to a loss of time.
6. That, contrary to what Bertillon thought, his measurements often fit more than one subject.
7. That old age changes the measurements.
8. That the subject can render the measurements false.
9. That it is not a proof of identity.
10. That it cannot be applied to women.
11. That it is expensive.
12. That it cannot be effectively used upon an unwilling subject.
13. That it cannot be applied to corpses.
14. That it cannot be required of accused persons before sentence.
15. That for the above reasons its field is limited.
16. That it is very difficult to use internationally.

He also outlines the otometric system of Frigerio, the craneographic system of Anfosso, the geometric system of Matheios, the ophthalmostatometric system of Capdivelle, the ophthalmoscopic system of Levinsohn, the radiographic system of Levinsohn and the systems of Tamassia, Villebrun, Merciolle Dubois and Bert y Viannay.

In Chapter 5 he takes up the history of the dactiloscopic systems, noting that they were used nearly twelve hundred years ago in Corea and a thousand years ago in China and Japan, and gives credit to William J. Herschell, the governor of Bengal, for having first adopted it, in 1858, for the identification of the Hindustani. In 1880 Gilbert Thompson used this method in Arizona, since which time many systems have been made for the use of this method of identification.

Ortiz outlines the principal systems in great detail, giving plates showing the different methods by which the different marks can be

## REVIEWS AND CRITICISMS

catalogued. He finds that dactilography has many other advantages over any other system.

1. The marks on the fingers are not alterable. If the skin is destroyed, the new skin contains the same lines as the old one, and any attempt to destroy the marks by amputation is in itself a method of identification.

2. Lines appear upon the hands before birth and do not change, as we have said. They are never the same in any two individuals.

3. This method of identification can be applied upon unwilling subjects.

4. It can be used in cases of women and children.

5. The impressions are mathematically exact and do not depend upon the acuteness of the operator. There is no room for error or tolerance.

6. Any crime in which the hand of the criminal becomes bloody or dirty, it becomes a method of criminal research.

7. It is useful in police work.

8. It can be used in cases of habitual delinquency.

9. It is not libelous, as photography is, used under the Bertillon system.

10. It can be used on corpses.

11. It can be used upon the accused before trial.

12. It is very inexpensive.

13. It can be readily internationalized.

14. It makes the creation of national registry bureaus possible.

In Chapter 14, Ortiz takes up the particular instances in which a cheap and accurate method of identification is necessary and shows its use in identifying soldiers killed in battle. He adds to his book a full appendix, in which he sets out the laws of Cuba establishing this method of identification.

While the book is highly technical and is written in such detail as to render it impossible to review in the space permitted, it nevertheless contains such general information as makes it a most interesting work to those who are not experts in dactilography or police or criminal detection.

Philadelphia.

JOHN LISLE.

---

DER OSTERREICHISCHE STRAFPROZESS MIT BERÜCKSICHTIGUNG DER RECHTSPRECHUNG DES KASSATIONSHOFES, von weiland *Dr. Friedrich Rulf*. Vierte Auflage bearbeitet von *Dr. Wenzeslaus Grafen Gleispach*. Vienna (F. Tempsky) and Leipzig (G. Freytag), 1913 pp. 362 and index.

Any law-book which has enough vitality of ideas or other qualities to perpetuate itself to a fourth edition already has something to commend it. The first edition appeared in 1884 and the third edition in 1895; and the fact that Count Gleispach after a lapse of eighteen years thought it useful to prepare a new edition of Rulf's book in a period of legislative ferment, instead of constructing a new work, adds some-

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thing more by way of favor to a first good impression. Yet, the editor encountered many difficulties in avoiding an entire reconstruction of form and substance of his text which might thus destroy its identity. These difficulties are commented on in the editor's preface which also indicates in a general way what contributions have been made by him to the original work. But if the question were in any way important, it would be a little hard to know always what is the work of the deceased author or of the living editor, without a comparison with the earlier edition.

As a work purporting to be an exposition of the law of criminal procedure as it is, and intended, perhaps, principally for students it can be highly commended. In 226 sections each with a separate title and hardly ever exceeding a page in length, a survey is provided of the entire field of criminal procedure from arrest to appeal and execution. No book in German, of course, ever omits the *grundlegende Begriffe*, and the present work is true to type, but usefully so. The early sections in a few pages also give a rapid historical review of criminal procedure from ancient times to the reform period of the latter days. The literary references, usually given at the head of sections, are carefully and sparingly used. Special care has been given to legislative references, and occasionally a procedural point is connected with a decision of the Court of Cassation.

From our standpoint, a work of this kind is of value to us, aside from direct information of the methods employed in a foreign country, in furnishing interesting points of comparison with our own system of law. For example, the topic (or rather, as it is with us, the major subject) of evidence is disposed of in this work in a few pages, not of detailed rules, but general principles. Continental legal literature does not know anything like the stupendous work on Evidence of Dr. Wigmore in five royal octavo volumes. In a bureaucratic country, it is the function of the judge not to sit idly by as an umpire in a contest of wits governed by a formalistic system of question and answer, but actively to seek to know the facts of each case. Our rules of evidence on the contrary are essentially restraints on the outward form of our democracy, and the chief function of the judge in a trial is to see that these restraints are properly applied as they are invoked by the parties, regardless of the issues involved. This system supposes that it contains a set of formulas accurately adjusted to the psychology of human nature, and inherently suitable to develop under the action of the antagonism between prosecutor and defending attorney, the right precipitate of truth without any variation of the formulas for the particular experiment in hand. It is clear that justice can be administered on a large scale in one country with the fewest possible rules of evidence and again in another with a complicated and elaborate mechanism of rules. Whether one system or the other is to be preferred cannot be answered on a priori grounds but rests upon a great variety of conditions essentially historical and in part accidental. In any event it may be profitable to know and to understand that there are different points of view.

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As further illustrative of the comparative value of such a work, it may be noted that in certain minor classes of cases the oath is replaced by a hand-grasp, that property damage may be adjusted at the same time the criminal case is heard, that the abuses surrounding the employment of expert witnesses are curbed by reasonable statutory provisions, that general verdicts may be supplemented by an auxiliary verdict and special interrogatories, that witnesses may be summoned by telephone, etc., that entirely private trials may be had for juvenile offenders, that the office of juror is a position of honor and that he receives no compensation, that a two-thirds verdict of a jury is sufficient for conviction, etc., etc. This limited enumeration (which might be considerably prolonged) is not given with any suggestion that the novelties, if any, indicated by these matters are necessarily such as are fit to be adopted, but they may at least correct the impression that Austria is a country of Mediaeval methods of justice. On the contrary, in many respects the system of criminal procedure there, shows signs of fertility of invention and a progressiveness which our system of law would find advantageous to imitate; but it must be remarked that little is to be expected of legislative invention inspired by the unconsidered and unreflected methods which have characterized the activities of American State legislatures. These activities must be supplemented by statistical, historical and comparative investigations. No doubt the importance of this truth will in due season impress itself.

When a book in the German language is provided with an index and especially a good index, book-review tradition requires that the fact be noted, and it is therefore dutifully set down.

Chicago.

ALBERT KOCOUREK.

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DIE STRAFRECHTLICHE BEHANDLUNG DER JUGEND IN ENGLAND. By Dr. jur. *Karl Struve*, Gerichtsassessor. Otto Liebmann, Berlin, 1914. Pp. v+302. Paper m 7, bound m 8.

It is curious that one should find in this German volume the most complete and systematic description of juvenile delinquency in England. The preface, written in March, 1914, indicates that the book is the product of the author's observation of the problems covered during his study of the judicial life of England from October, 1912, until June, 1913. The description is limited to the jurisdiction of England and Wales, the procedure in which is, however, quite similar to that throughout Great Britain. The historical development is traced from the earliest mention of special provisions for youth in the eighth century down to the establishment of the first juvenile court in Birmingham in April, 1905, and the establishment of the present methods of caring for children and young people under the Children's Act of 1908 and the Borstal system of correction and training. On account of the special training of the author it is natural that the legal side of the care of juveniles should be very fully and carefully set forth. His breadth of interest is shown, however, by two-thirds of the volume being devoted to measures for the protection, punishment and disciplinary training of those who have not reached their majority, including

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descriptions of the places of detention, industrial schools, reformatories, probation and after care.

While Dr. Struve refrains from expressing himself as to the desirability of transplanting British methods to Germany, he comments quite freely on the conditions in England which he believes are most potent causes of delinquency. His statistical comparison of juvenile delinquency in England and Germany indicates more convictions in proportion to the population in England with certain striking differences as to the frequency of different offenses. In Germany there were 6,243 cases of dangerous assault and battery against 242 the same year, 1911, in England. Destruction of property was nearly twice as frequent in England while convictions of children for moral offenses were only 98 in England against 1,014 in Germany. The punishment of 2,328 youths for begging and playing has no parallel in Germany.

As general direct causes of delinquency in the large cities of England he sets forth especially the great social gulf between the lower and upper classes which is illustrated by 2% of the children under 16 in England and Wales receiving poor relief. The second main cause he finds to be alcoholism which he finds mentioned either simply or in combination with other offenses in over 150,000 cases in one year in England. "Truly nobody is so truly a product of environment as the youthful lawbreaker of the great cities of England." As secondary causes he discusses the absence of proper physical and mental recreation and the passion for moving picture shows, betting and gambling. He even finds the view expressed that the juvenile lawbreakers are so much better cared for by the public than those in the same station in life who are not offenders against the law, that some parents are inclined to use the industrial schools as a means for training their children. From the instances cited one feels that the author has perhaps paid undue attention to the unfavorable conditions, although the criticisms made are offered in the friendliest spirit and indicate how the conditions impress one who is familiar with the stricter discipline of youth in Germany. An excellent nine-page classified bibliography covers the literature and reports on juvenile delinquency in Great Britain.

The University of Minnesota.

JAMES BURT MINER.

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THE PROBATION SYSTEM. By *Cecil Leeson*. P. S. King & Son, Orchard House, Westminster, London, pp. 191.

In the introduction of this book Mr. J. H. Muirhead states: "Probation is one of the most interesting of the signs of our times. It is a recognition, all too tardy, in the field of crime and punishment, first, of the sensitiveness of unformed character to the influence of circumstances; second, of the responsibility of society itself for the direction of this influence; and, third, of the superiority in certain well-defined cases of the method of home oversight to any form of prison discipline as a means of improvement."

Mr. Leeson's book is a clear, brief and instructive presentation of the probation system. The author was a probation officer in England and in addition spent two years in studying probation work in the

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United States. The great value of the book is the comparison, which runs all through all the chapters of the English and American probation systems. For example in the first chapter on "Probation and Probation Institutions," a comparison is drawn between the Chicago Juvenile Court, which is a Chancery Court, and the English Courts which are provided for by the Children's Act of 1908.

In the Chicago Court the children appearing before it are not viewed primarily as offenders deserving punishment, but as wards of the State needing protection. The English Courts are still, strictly speaking, Criminal Courts, though the proceedings are usually considerably modified and softened. The author states: "In England, the chief consideration is the offence of the child; in America, the chief consideration is the offender."

Considerable space is given to the discussion of the discovery and treatment of defective offenders. In this discussion the statement is made that, "Physically and mentally defective offenders, though relatively few as to number, form the group from which habitual offenders are chiefly recruited. The problem of the recidivist, therefore, becomes to a large extent the problem of the defective juvenile delinquent."

It is further stated that none of the four possible methods in England of dealing with the defective delinquent are satisfactory. The four methods are—probation, Home Office School, prison and discharge.

The writer of this review knows from his experience in the Chicago Court, that most of the States of the Union have no satisfactory way of dealing with the defective delinquent type. They are discovered and become wards of the States—patients of the States—but the States provide no satisfactory places for their treatment.

An excellent comparison of the Adult Probation Laws and systems is given. The English Probation Act leaves the Court free to apply the system to any reclaimable offender, and, for any offense, as it thinks expedient, whereas the tendency of recent American Probation Laws is to limit the discretion of the Court in these respects. The former laws have been successful in England and in Massachusetts and New York—the States which were the first to pass probation laws.

It is interesting to note that in Colorado the Chancery procedure has been extended to certain adult offenders and that neither in England nor the United States has any adult probation law ever been repealed.

Concerning the selection of probation cases the author concludes that the preliminary inquiry should be sufficient to answer these principal questions:

(1) Do the offender's character and antecedents show him unmistakably and fixedly depraved, or do they indicate but a tendency to depravity?

(2) Does the offender, having regard to his disposition and to the surroundings in which he lives, afford reasonable promise of becoming law-abiding?

(3) If, owing to his present disposition or his present surroundings, or to other circumstances, this cannot reasonably be hoped of

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him, can such changes be effected through the agency of probation, as to make it reasonably probable that he will become law-abiding?

The above questions show that the author feels that probation is only one of many treatments which may be applied to offenders and that it is by no means the proper treatment for every offender.

Emphasis is laid upon the necessity of having experienced and well-trained people with strong personal qualifications as probation officers.

Various statistical tables are given to show the results of probation in England and America leading to the conclusion that "Whether one compares the results to society of the probation system and the gaol system, or whether one looks at the lives of the offenders themselves, the probation system shows advantageously as at once the more educational and more economical method."

The unsuccessful probation cases are classed as (a) Those who are returned to Court by the probation officer for breach of conditions; (b) Those who are arrested by the police and convicted of a further offence; (c) Those who abscond.

For the treatment of those cases it is recommended that long term industrial training centers be established both for the offenders who suffer from physical defects and for those who are normal physically.

The defects in the probation system are stated as being (a) Unsuitable probation officers; (b) Unsuitable cases; (c) Too short probationary periods; (d) Inadequacy of organization and control.

The Probation System by Cecil Leeson is an accurate and valuable handbook on the practice and procedure of Courts having jurisdiction over cases in which probation orders may be entered and on the work of probation officers.—It is highly recommended.

Chicago.

JOEL D. HUNTER.

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VERBRECHERTYPEN: 1 BAND, 2 HEFT. SAUFER ALS BRANDSTIFTER, von H. W. Gruhle und K. Williams, Heidelberg; und G. L. Dreyfus, Frankfurt a. Main.

1 BAND, 3 HEFT. Zur Psychologie des Massenmords Hauptlehrer Wagner von Degerloch. Eine Kriminologische und psychiatrische Studie von Professor Dr. Robert Gaupp, in Tubingen. J. Springer, Berlin, 1913, pp. 101. M. 2.

The second and third monographs in the above series, continue the analysis of criminal types. In response to criticisms, the authors now disclaim any intention of presenting the bases upon which the types are worked out. Their aim will be to give as clear a picture as possible of the actual (not an ideal) type, using their "experience" as the guide. This makes of the present series, then, a literary product. It leaves us in the dark as to how much of the characterization of the type lies in the imagination of the authors, how much is due to the methods of procedure in securing the information, and how much is actual fact. The scientific studies upon the broad questions of *Milieu oder Anlage* will appear as *Heidelberger Abhandlungen*, two volumes of which are now ready.

The problem is to present the material in such a way as to give a



## REVIEWS AND CRITICISMS

complete picture of the type. For this purpose the heredity, the early history and environment, the educational advantages, and the details of recent life must be examined. In each of the four cases presented in the first of the two papers above mentioned, the heredity is in some degree defective. But while giving this fact due weight, the authors pass on to the questions of criminological fact and examine the habits, the dispositions and attitudes of each individual, and present such of them as stand in close relation to the final act. The treatment is limited to a characterization from the diagnostic point of view. It is not within the province of the monograph to discuss means of correction. It is found, therefore, that a gradual onset of chronic alcoholism ends in delirium and an explanation of this act is given in terms of the mental and physical background. But one incongruous note appears in this series of presentations. In the case of Bitter, by Prof. Dr. K. Wilmanns, it is asserted that no interesting psychological problems are presented and apparently for the reason that there are so many cases like this one. As against this belief, there is a conviction among psychologists that it is among these exaggerated and commonplace cases that we are likely to find the solution of some of the most perplexing psychological problems; for here the "stamping in" process (of the experiences throughout the earlier history) has been most thoroughly effective. The authors carefully avoid any superficial conclusions as to the causation of crime by alcohol, and it seems clear from the descriptions that they regard alcoholism as merely one of the expressions of an underlying defective character.

A very suggestive and useful addition to this monograph appears in the appendix. Two charts are given in colors, from which one may read at a glance the life history of the criminal, the amount of time he has spent during his life in the house of correction, in prison, in a hospital, in an institution for the insane, etc.

In the second of the above monographs appears the life history of Wagner von Degerloch, a school teacher, 40 years of age, of excellent reputation and possessed of many friends. He stabbed his wife and four children while they were asleep, proceeded thence to a neighboring village in which he was formerly employed as a teacher, and after setting fire to a number of buildings, he took his stand near a school-house and shot at every man who appeared, sparing the women and children. Eight men were killed and twelve wounded. He was overpowered after a fierce struggle in which he was beaten into insensibility and finally was sent to a psychiatric clinic for examination. The results of the investigation conducted by Dr. Gaupp are given as presented by him to the trial court. The paper consists of some 200 pages, together with a classified bibliography of 99 titles, each with a critical note, on the subject of wholesale murders.

The family history in this case shows psychopathic taint but the character development of later life shows clearly the effects of early association with the mother, a woman of strong emotional nature with antisocial tendencies. The history is traced through boyhood, adolescence and manhood. His educational history, his examinations for

## REVIEWS AND CRITICISMS

positions as teacher, the details of sexual perversions, events leading up to marriage and an unhappy domestic life, are fully set forth.

His teachers and associates both professional and social speak highly of him. He was regarded as an ambitious man, of keen and observant mind, tending to philosophic and literary ideals. He kept a voluminous diary in which he expressed somewhat fully his hopes and fears, his plans and ideals. During the later years he became dissatisfied, morbid, suspicious. He ranked himself high among German literary men, conceived a hatred for government and social restraints, and practiced sexual perversions. After an enforced marriage, which necessitated removal to another village, he gradually grew away from friends and developed a morbid mental existence apart from the world of affairs about him. This phase of his life shows religious touches in which he compares himself with Christ. He finally came to believe that his life was ruined through his wife's tattling to her friends in the neighboring village, and decided to end it by putting out of the way all who knew her and her reports. The plan was a deliberate one, worked out in detail for every step and for every minute of the day and was frequently mentioned in a diary kept by the patient.

At the clinic he was diagnosed as a Paranoiac, but it is recognized that the exception of the women and children in the wholesale shooting shows an unusual characteristic for Paranoia. It is supposed that the paranoiac system became so widespread through frequent rehearsal that the motivation changed, and the scheme of justification for the deed necessitated the annihilation only of those men who he believed had held him in scorn, and of the children who might inherit his own defects. The study is an excellent analysis of a certain type of worry and its effects.

Yale University.

A. H. SUTHERLAND.

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**SOCIAL LAWS OF PENNSYLVANIA.** By *Ward Bonsall*, member of the Allegheny County Bar. Published by the Associated Charities of Pittsburgh and the Philadelphia Society for Organizing Charity, 1914. Pp. ix, 146. \$1.50.

Complaint is frequently made that social workers waste much valuable time through ignorance of the law. The complaint while just, seems in a fair way to be placed in the past tense, if we may judge from such a book as Mr. Bonsall's. Its purpose, in brief, is to present as concisely and untechnically as possible those statutes and the process of their enforcement, which bear upon the social relationships and conditions of families and persons which social workers are called upon to serve and deal with in their daily rounds. To be sure it is in no sense a "Handy Lawyer," designed to obviate recourse to competent legal advice. It is designed to offer the social worker just that familiarity with the commonwealth's resources in law which will enable him to walk wisely, and will direct him where to go when he needs expert technical guidance. Moreover, it is significant as an experiment in co-operation between two well known social agencies and a lawyer whose social services have already been distinguished.

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The content of the book is distributed over a dozen special topics, the chief of which are Children, Desertion and Non-Support, Poor Law, Mental Defectives, Public Health, Criminal Law, Collection of Debts, Labor, Marriage, Divorce and Married Women, Decedents, Immigration and Naturalization, Liquors and Special Police. The chapter on Criminal Law covers a digest of crimes, alphabetically listed, a summary of the chief elements in criminal procedure, and sections on search warrants, extradition, and adult probation. The modernist suffers a distinct shock as he reads the statutes on, say, blasphemy or common scolds!

The method of presenting the mass of laws, amendments and court interpretations is clear and concise. Citations from statutes and cases accord with the general method followed by legal writers. The historical sweep of legal development in Pennsylvania is made clear by a valuable chronological list of statutes. And an intensive index manifold the serviceability of the volume.

Any criticism of so good a piece of work might seem gratuitous; but since the book may be adopted by other states as a model, it might be well to hint that wider margins and a more substantial binding would improve its life and looks. The typography is pleasing, with only here and there a slight lapse in proof-reading.

It is sincerely to be hoped that other lawyers may follow Mr. Bon-sall's lead. Social work will be immensely lightened, and will avoid many deadfalls with such competent legal guidance.

University of Pittsburgh.

ARTHUR J. TODD.

# Journal of the American Institute of Criminal Law and Criminology

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# American Institute of Criminal Law and Criminology

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**OBJECT:** The object of the American Institute of Criminal Law and Criminology "shall be to further the scientific study of crime, criminal law and procedure, to formulate and promote measures for solving the problems connected therewith and co-ordinate the effort of individuals and of organizations interested in the administration of certain speedy justice."

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E. Ray Stevens, Judge of the Circuit Court, Madison, Wisconsin.

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Edward J. McDermott, of the Kentucky Bar, Lieutenant Governor of Kentucky, Louisville, Ky.

For the term expiring 1916:

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